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Rules and Regulations

Federal Register
Vol. 65, No. 30
Monday, February 14, 2000

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2638

RIN 3209–AA07

Executive Agency Ethics Training Programs Regulation Amendments

AGENCY: Office of Government Ethics (OGE).

ACTION: Interim rule.

SUMMARY: In this interim rule, OGE has rewritten its executive branch agency ethics training regulation in plain language. This rule also addresses the comments OGE received regarding the two substantive changes made by the previous interim training regulation.

The training regulation requires that covered employees who file public financial disclosure reports receive verbal ethics training every year presented by a qualified instructor who is available to respond to ethics questions. This rule clarifies that the instructor is not required to be at the training site. This rule, like the previous interim rule, also permits agencies to meet the annual ethics training requirement for all other covered employees with annual written training, provided these employees receive verbal ethics training at least one out of every three calendar years. Although the substance of this rule is nearly identical to the previous interim rule, the rule does make certain minor changes as a result of comments received by OGE.

DATES: This interim regulation is effective March 15, 2000. Comments by agencies and the public are invited and are due by May 15, 2000.

ADDRESSES: Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Arielle H. Grill. Comments may also be sent electronically to OGE's Internet E-mail address at usoge@oge.gov. For E-mail messages, the subject line should include the following reference—''Comments on the Executive Agency Ethics Training Programs Regulation Amendments.''

FOR FURTHER INFORMATION CONTACT: Arielle H. Grill, Attorney-Advisor, Office of the General Counsel and Legal Policy, Office of Government Ethics; telephone: 202–208–8000, extension 1219; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 1997, OGE published an interim rule amending subpart G of 5 CFR part 2638, ''Executive Agency Ethics Training Programs'' (Training Regulation). *See* 62 FR 11307–11314. Minor corrections to the rule were issued on March 19, 1997, 62 FR 13213, and March 27, 1997, 62 FR 14737. Most provisions of the rule became effective on June 10, 1997. Interested persons were asked to submit comments by April 11, 1997.

The most significant revisions that the 1997 interim rule amendments made to the Training Regulation were in the area of annual ethics training to be provided to certain covered employees. The prior version of the Training Regulation required agencies to provide annual verbal ethics training to all covered employees. However, the interim rule amendments permitted agencies to fulfill this requirement for most covered employees by means of written training, provided that the employees receive verbal training at least once every three calendar years. The interim rule did require agencies to continue to provide annual verbal training to employees who file public financial disclosure forms (''public filers''). On January 1, 1998, agencies became subject to a further requirement that a qualified instructor be present during and immediately following the annual ethics training provided to public filers.

As stated in the preamble to the 1997 interim rule amendments, the changes made by the amendments were not intended to enable agencies to diminish the resources that they devote to ethics training. The interim rule was structured to minimize the impact of OGE-mandated training, focusing more intensive training on those employees in sensitive positions (public filers) while ensuring that all executive branch employees receive sufficient training to enable them to understand the ethical responsibilities concomitant with their Government positions. By lessening the level of OGE-mandated verbal ethics training, agencies are able to reallocate their ethics training resources for use in other parts of their ethics training programs.

II. Plain Language Modifications

Executive Order 12866 and the President's Memorandum of June 1, 1998 require Federal agencies to write all new rules in plain language. In keeping with the spirit of the President's Memorandum, we have attempted to rewrite this new interim rule in plain language by: organizing the material more logically; using shorter sentences; eliminating unnecessary technical language; stating the rule's requirements clearly; and using tables to summarize information. We invite your comments as to whether this interim rule is easier to understand and how we could further improve its clarity. This plain language version of the previous interim rule makes only nonsubstantive changes to the rule. The following discussion summarizes some of the more significant changes that the plain language revision has made.

This interim rule is organized differently than the previous rule. We have avoided numbering subordinate paragraphs past the second level (except for the rows of the helpful tables at new § 2638.706(c)). Thus, this rule has a § 2638.703(a)(1) but not a § 2638.703(a)(1)(i) or a § 2638.703(a)(1)*(i)(A)*. We believe this change makes it easier to follow the rule. We have, however, added two sections to the rule. One new section (§ 2638.702) provides definitions of terms used throughout this subpart. The other new section is a result of our dividing the annual training requirement into two sections: one for public filers (§ 2638.704) and one for all other covered employees (§ 2638.705). Because the training requirements are different for these two groups of employees, we believe this format clarifies the different requirements for each.

While the previous interim rule referred to verbal and written ethics ''briefings,'' this rule uses the term ethics ''training.'' This substitution was made because briefing is a more technical, legal term and training is a

more commonly used and understood term.

We have deleted the discussion in existing § 2638.701 of the particular provisions of law that are to be covered by ethics training. We believe that this information is redundant as it is also stated in new § 2638.704(b) which addresses the content of ethics training. Section 2638.704(b)(5) (and § 2638.703(b)) requires that the agency provide covered employees with the office addresses and telephone numbers of the Designated Agency Ethics Official (DAEO) and other agency ethics officials. Although not required, the E-mail addresses of such persons may also be given to covered employees.

This interim rule does not contain the discussion of the responsibilities of the DAEO found in previous § 2638.702(a) and (b). The DAEO's responsibilities are clearly delineated earlier in part 2638 at § 2638.203. Section 2638.203(a)(3) states that the DAEO must initiate and maintain an ethics education and training program. We believe this section requires the DAEO to be responsible for all aspects of the agency's ethics training program. Aside from the discussion of the DAEO's duties, we are moving the remaining material (concerning the agency's written training plan) from the existing § 2638.702(c) to the new rule's § 2638.706. While the requirements for the agency's written training plan are identical in this rule, we have provided tables in § 2638.706(c)(2)–(c)(4) to assist agencies in determining the number of employees they plan to train in each upcoming calendar year.

We are eliminating the statement in existing § 2638.702(c) that, in preparing its written training plan, an agency must ''coordinate with OGE where necessary.'' We believe that wording is unnecessary because agencies are always welcome to consult with OGE on any ethics-related matter, regardless of a published regulation.

We have renamed the person who is authorized to conduct ethics training. The previous interim rule referred to that person as a ''qualified individual.'' This rule refers to that person as a ''qualified instructor'' in order to make it clearer that the person must be qualified to teach, or prepare the material for, ethics training courses. In addition, this interim rule requires that the qualified instructor be ''available'' during and after the training provided to public filers. *See* § 2638.704(d). The previous interim rule required the instructor's ''presence,'' which caused confusion as to whether the instructor must be physically present at the training site. Use of the term ''available'' clarifies that the instructor's physical presence is not required. As explained in the examples following § 2638.704(d), an instructor is ''available'' if he or she is connected to the training site through a video or telephone link.

The following distribution table shows where the material from the previous interim rule can be found in this new interim rule. It also indicates the sections from the previous rule that have been removed, as discussed above.

Old section	New section
2638.701 (1st sentence).	Removed.
2638.701 (2nd sentence).	2638.701.
2638.701 (3rd sentence).	2638.702 (*Employee* definition).
2638.702 introductory text.	Removed.
2638.702(a)	Removed.
2638.702(b)(1st sentence).	Removed.
2638.702(b)(2nd sentence).	2638.704(d).
2638.702(c)	2638.706.
2638.703	2638.703.
2638.704(a)–(b)	2638.704(a); 2638.705(a).
2638.704(c)	2638.704(b); 2638.705(b).
2638.704(d)(1) ...	2638.704(c); 2638.705(c).
2638.704(d)(2)(i)	2638.704(c).
2638.704(d)(2)(ii) (& Examples 1–3 to ¶(d)(2)(ii)).	2638.704(d) & Examples 1–3 to ¶(d)).
.....	2638.704(d)(2)(iii) (& Example 1 to ¶(d)(2)(iii)(A)) 2638.704(e) (& Example to ¶(e)(1)).
2638.704(d)(3)(i)	2638.705(c)(2).
2638.704(d)(3)(ii)	2638.705(c)(1).
2638.704(d)(3)(iii).	2638.705(d).
.....	2638.702 (new, except for *Employee* definition).

III. Analysis of the Comments Received on the Prior Interim Rule

The Office of Government Ethics received 15 comments in response to the 1997 interim rule amendments. Of these 15 comments, 13 were from Federal executive branch agencies, one was from an individual executive branch employee, and one was from an interagency group of ethics officials. Generally, the comments received by OGE were in favor of the changes made by the interim rule amendments. In particular, the comments supported the provision permitting agencies to fulfill the annual ethics training requirement for most covered employees through the use of written ethics training in two of any three calendar years. The Office of Government Ethics also received several positive responses to the deletion of ''procurement officials'' (no longer a defined category in light of changes to the procurement integrity law) from the categories of covered employees. After careful consideration of the comments received, OGE has decided to retain the interim rule amendments with minor changes. We do, however, invite further suggestions as to improvements in the ethics training program. This new interim rule will give agencies an additional opportunity to make such suggestions, as well as to comment on the new plain language format of the rule.

An analysis of the comments received follows.

Verbal Ethics Training for Public Filers

In the preamble to the interim rule amendments, OGE specifically invited comment as to whether it is appropriate to have stricter training requirements for public filers than for other covered employees. One agency indicated that it felt the distinction was unnecessary because, generally, public filers better understand and are more sensitive to their ethical responsibilities than other employees. However, two other agencies and the interagency group of ethics officials endorsed the annual verbal training requirement for public filers. After considering these views, and for the reasons originally stated in the preamble to the interim rule amendments at 62 FR 11308, we have decided to retain the requirement that public filers receive verbal training every year.

The provision of the 1997 interim rule amendments that generated the greatest amount of comment was the requirement that agencies, effective January 1, 1998, have a qualified instructor ''present'' during and immediately following the annual training provided to public filers. Nine of the commenters addressed this section, with comments ranging from supportive to sharply critical. For the reasons given below, OGE has decided to retain the ''presence'' requirement. Notably, this interim rule substitutes the term ''available'' for the previous rule's term ''present.'' *See* new § 2638.704(d).

New § 2638.704(d), which states that a qualified instructor must be available during and immediately after verbal training, does not require the instructor's physical presence at the training session. As noted, OGE has replaced the word ''present'' with ''available'' to clarify that the instructor need not be physically present at the training site. It is sufficient if some mode of telecommunications enables the instructor to answer employees' questions during and after the training. As in the existing regulation, the

examples that follow new § 2638.704(d) illustrate the flexibility of this provision. Examples 1 and 2 show that a qualified instructor is available when the public filer receiving the ethics training has access to the instructor through a video conference link or telephone line. These examples demonstrate how agencies may take advantage of existing and new communication technologies that provide greater access and can substitute for actual physical presence.

Two commenters indicated that providing employees with a set time to contact a qualified instructor should satisfy the requirement that a qualified instructor be available. After careful consideration, OGE has not adopted this proposal. The delay in time between the receipt of the training and the answer to the employee's question could easily result in a lost educational opportunity. Also, the use of a separate set time for contacting a qualified instructor may discourage employees from contacting agency ethics officials at other times. The primary purpose of the Training Regulation is not necessarily to provide agency employees with a comprehensive knowledge of all of the conduct-related laws and regulations that govern them. Rather, the rule is intended to create an awareness of those laws and to introduce the point of contact where employees can obtain further ethics advice. Agency employees are, therefore, given the names and telephone numbers of their ethics officials at the start of their employment. *See* new § 2638.703(b). Covered employees must receive annual updates of this information as part of their annual ethics training. See new § § 2638.704(b)(5); 2638.705(b).

One agency, and one individual from that agency, stated that the previous interim rule amendments undermine the agency's use of computers for annual training. The agency felt that the advantage of computer-based training, such as the computer game that it had developed, lies in its flexibility. The agency pointed out that its game makes ethics training available at the employee's convenience, including off-duty hours and weekends, and can easily be distributed worldwide. Having developed the game with OGE's assistance, the agency felt that the usefulness of the game was undercut by the interim rule amendments because the planned implementation of the game would not meet the requirements of the regulation. The agency therefore urged that the presence requirement be deleted or, at a minimum, changed to once every three to five years. The individual submitting comments, while acknowledging that an agency can waive the requirement of a qualified instructor in certain situations, stated that the main problem with the requirement would be the loss of flexibility in having to complete the training at a set time, rather than at the employee's convenience.

The points articulated by these two commenters concern the verbal training that agencies must provide to *public filers.* In the case of a covered employee other than a public filer, the computer game developed by the agency should meet the requirements of new § 2638.705(c)(1) which does not require that a qualified instructor be available. Computer-based methods of training are specifically mentioned as fulfilling the requirement for verbal training in new § 2638.705(c)(1). Thus, the game (and similar computer-based training) remains an excellent tool to fulfill the verbal ethics training requirement for the approximately 93% of covered employees who are not public filers. Similarly, the use of computer-based training is also an appropriate way for agencies to provide verbal training to the approximately 7% of covered employees who are public filers, provided that a qualified instructor is available to answer questions. New § 2638.704(c)(2) specifically lists computer presentation as a means for fulfilling the verbal training requirement for public filers. The two commenters, however, felt that making a qualified instructor available to public filers undermines the primary benefit of the computer game: its flexibility. For the following reasons, we disagree.

First, as stated above, ethics training is most effective when employees are provided with spontaneous answers to their questions. A delay in time between question and answer could result in an employee forgetting to ask the question and could discourage the employee from taking the initiative to contact the instructor. In keeping with this philosophy, an agency could use a computer game to provide public filers with training through their workstation computers. Employees could be given a specific time reserved for accessing the computer game when a qualified instructor is standing by to respond to any questions concerning the game or other ethics issues. This specific scheduled time would not prevent the public filer from accessing the computer game at any other time but would ensure that the public filer receives the required one hour of official duty time for the training. The official duty time requirement is a long-standing one, having been in existence from the inception of the Training Regulation. Since the 1992 promulgation of the original Training Regulation final rule, OGE program reviews have not indicated that agencies find it difficult to fulfill this requirement.

One commenter urged OGE to defer to an agency's determination as to which circumstances make it impractical to provide verbal training with a qualified instructor available. This interim rule retains, at § 2638.704(e)(1) (for public filers) and § 2638.705(d)(1) (for other covered employees), the Training Regulation's long-standing exceptions providing the DAEO at each agency with the authority to use verbal training without a qualified instructor or to use only written training. Under these exceptions, where the DAEO or his or her designee makes a written determination that circumstances make it impractical to meet the verbal training requirement for a covered employee, a qualified instructor need not be available (for public filers) and written training can be provided for any covered employees (including public filers) in any year. The Office of Government Ethics realizes that each agency knows best the practical issues that it faces in providing training and, thus, OGE does give due deference to an agency's written determination that verbal training is impractical.

The exception at § 2638.704(e)(1) pertains to the comments from two agencies which have widely dispersed groups of public filers. One of these agencies expressed concern that some public filers may be unable to attend training at a group session and that makeup sessions would require significant resources because the entire ethics staff is centrally located. The other agency stated that it would be very difficult for them to establish even a scheduled telephone link. Where distance or difference in time zones makes such scheduling impractical, as in these cases, the agency has sufficient grounds to make a written determination waiving the requirement that a qualified instructor be available.

Another commenter felt that OGE should provide a specific exception in the regulation for training that takes place outside of core duty hours or outside of the continental United States, thus saving DAEOs the necessity of making individual written determinations in these situations. No similar comment was received and no other agency has expressed this concern during OGE's reviews of agency ethics programs. We note that the exceptions in §§ 2638.704(e) and 2638.705(d) do give DAEOs a fair amount of flexibility because DAEOs are permitted to make a single written determination for

multiple employees. For these reasons, OGE did not adopt this recommendation.

Annual Ethics Training for Other Covered Employees

For covered employees who are not public filers, these interim rule amendments continue to enable agencies to meet the annual training requirement through verbal training once every three calendar years (the ''one in three'' rule). Unlike the rule for public filers, there is no requirement that a qualified instructor be available. For those calendar years where eligible covered employees do not receive verbal training, written training is required. Five commenters commended these changes for providing agencies with greater freedom to devote resources to desired ethics training goals. On the other hand, one commenter felt that the 1997 interim rule amendments went too far in liberalizing the ethics training requirements. This commenter stated that annual verbal training demonstrates the importance of the ethics program to employees and the one in three rule would diminish the importance of the ethics program (and possibly its resources) for the covered employees receiving written training.

The Office of Government Ethics has retained this provision in this new interim rule. As noted earlier, the intent of the prior interim rule was not to diminish the emphasis or resources of agency ethics training programs. The intent was instead to reduce the level of OGE-mandated verbal ethics training to better allow each agency to tailor its training program to its specific needs. Because the requirements are minimum standards, agencies are encouraged to go beyond them where they believe it is beneficial to their programs. In such cases, agencies can provide verbal training for all covered employees each year. As stated in the preamble to the interim rule amendments, OGE will reconsider the one in three rule if it finds that the result is a diminution of resources devoted to the ethics training program.

One commenter stated that agencies would be unable to keep track of which covered employees had received verbal training within the past three years. In reviewing this comment, OGE considered its reviews of agency ethics programs performed since the effective date of the 1997 interim rule amendments. These program reviews have not shown that agencies have had difficulty tracking their employees' training. An agency experiencing such tracking problems could simply provide verbal training to all covered employees every third year and provide written training to employees (other than public filers) in the other two calendar years. For these reasons, OGE has decided to retain this requirement in this new interim rule.

Two commenters requested that OGE allow the written ethics training that they gave employees, other than public filers, before June 10, 1997 (the effective date of the 1997 interim rule amendments) to satisfy the verbal training requirement for calendar year 1997. We note that it is generally unwise for an agency to change operating policies or procedures based upon a rule that is not yet effective. Indeed, OGE purposely delayed the effective date of the 1997 interim rule amendments for 90 days so that we could evaluate comments received from agencies prior to the effective date and determine whether it would be necessary to amend or cancel the interim rule amendments. The issue raised by these commenters is moot, however, since any opportunity to correct a problem in its 1997 annual ethics training expired on January 1, 1998.

On a similar point, OGE notes that verbal training provided under the former Training Regulation does count for the purposes of the one in three rule at new § 2638.705(c)(1). Thus, agencies who gave all covered employees verbal training in 1997 would not have to provide verbal training again for covered employees (other than public filers) until 2000.

Other Issues

Two commenters indicated their concerns with the requirement in § 2638.702(c) (new § 2638.706) that agencies develop a written training plan each year. Prior to the 1997 interim rule amendments, agencies were required to file these plans annually with OGE. The interim rule deleted this requirement and modified the information required in the plan, including the addition of a narrative description of the agency's annual ethics training. One agency indicated its opinion that OGE should move even farther to convert the annual training plan to a narrative-based document or, alternatively, that OGE should place no additional requirements on agencies but should allow them to develop their own plans in keeping with their internal needs. Although OGE may further modify the information required in the written plan based upon future experience, we have elected not to permit a mere narration. We believe that, to run an effective ethics training program, agencies need to plan ahead. The information required in the written training plan should serve as a useful tool to agencies as they prepare for each training cycle. The other comment regarding the written training plan argued that the plan served no purpose and should not be required. For the reasons given above, OGE does not agree with this comment. Furthermore, section 301(c) of Executive Order 12674, as modified by Executive Order 12731, requires agencies to develop written training plans.

Two commenters requested that OGE allow agencies to satisfy both the requirements for initial ethics orientation and annual ethics training with one training session. This comment endorsed language in the preamble to the 1997 interim rule amendments, at 62 FR 11308, stating that OGE would permit the time spent in annual verbal ethics training during the first 90 days of an employee's service to count against the one hour of official duty time required for the initial ethics orientation. As indicated in the 1997 interim rule amendments, this offset is not new. Both the original proposed and final Training Regulations, in 1990 and 1992 respectively, included a provision for agencies to partially or completely offset the official duty time requirement for the initial ethics orientation by the amount of official duty time spent in annual verbal ethics training. *See* 55 FR 38335, 38337 (September 18, 1990) and 57 FR 11886, 11888, 11890, 11891 (April 7, 1992). The Office of Government Ethics believes that agencies should have an incentive to provide verbal training to new employees even though such training is not required. Therefore, whether the verbal training is labeled an initial ethics orientation or annual ethics training, it will count as both if it meets the requirements of both. Similarly, if a written initial ethics orientation is modified slightly so that it meets the requirements for written annual training, it will count as both.

Finally, the previous interim rule amendments, at § 2638.704(d)(3)(iii)(B), retained the exception from the prior Training Regulation allowing written training alone for special Government employees (SGE) who work fewer than 60 days in a calendar year. This exception (now at new § 2638.705(d)(2)) permits agencies to meet the annual training requirement for these SGEs through written training only. This exception is included only in the section dealing with annual training for covered employees other than public filers since SGEs who work fewer than 60 days in a calendar year are not required to file public financial

disclosure reports. *See* 5 CFR 2634.201(a) and 2634.204.

Because SGEs typically serve limited terms of employment and because the interim rule amendments permit agencies to meet the annual training requirement for all covered employees (other than public filers) through written training for two of any three years, OGE specifically requested in the 1997 interim rule amendments that agencies inform us if they have SGEs who served for three or more years. If there were no such long-term SGEs, we realized this exception would be unnecessary. Three agencies responded that they have SGEs who serve for terms of three or more years. Accordingly, OGE has retained the exception in this interim rule. One commenter indicated that the language in the exception should be changed to ''60 or fewer days in a calendar year'' to more precisely track the language in 5 CFR part 2634. OGE has adopted this recommendation in the interim rule. *See* new § 2638.705(d)(2).

The Office of Government Ethics recently completed an agency survey to determine: whether agencies are aware of the changes to the Training Regulation made by the 1997 interim rule (the one in three rule and the fact that a qualified instructor's physical presence is not required); whether agencies have implemented the flexibility that the one in three rule allows; and whether the rule is effective. The survey was conducted as part of the regularly scheduled ethics program reviews performed in 57 agencies from December 1997 through November 1998. Sixty-one percent of the ethics officials said they have taken, or would be taking, advantage of the flexibility offered by the interim amendments. Eighty-nine percent of the ethics officials surveyed were satisfied that the interim rule amendments allowed their agencies to allocate ethics training resources in a more flexible and efficient manner and seventy-seven percent were satisfied with the effects of the changes on their agency's ethics training program. These officials believed that using written training allowed more time for ethics counseling, reduced the workload of the ethics office, and increased the number of topics covered by the training materials.

The Office of Government Ethics invites further suggestions as to overall improvements in the ethics training program, as well as comments regarding the new plain language format of the Training Regulation.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to sections 553(b) and (d) of title 5 of the United States Code, I find good cause for waiving the general notice of proposed rulemaking. Because the plain language changes made by these interim rule amendments to the Training Regulation simply clarify the existing regulation, there is no need to solicit comments in advance. Moreover, this rule provides for a 90-day comment period. All interested persons are invited to submit written comments to OGE on these interim rule amendments. The Office of Government Ethics will review all comments received and consider any modifications which appear warranted in adopting a final rule on this matter.

Executive Order 12866

In promulgating this interim rule amending the executive branchwide Government ethics training regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This interim rule has also been reviewed by the Office of Management and Budget under that Executive order.

Executive Order 12988

As Director of the Office of Government Ethics. I have reviewed this interim amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this interim rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal executive branch agencies and their employees.

Paperwork Reduction Act

As Director of the Office of Government Ethics, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this interim rule because it does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2638

Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: November 5, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending subpart G of 5 CFR part 2638 as follows:

PART 2638—OFFICE OF GOVERNMENT ETHICS AND EXECUTIVE AGENCY ETHICS PROGRAM RESPONSIBILITIES

1. The authority citation for part 2638 continues to read as follows:

2. Subpart G of part 2638 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart G—Executive Agency Ethics Training Programs

Sec.

Subpart G—Executive Agency Ethics Training Programs

§ 2638.701 Overview.

Each agency must have an ethics training program to teach employees about ethics laws and rules and to tell them where to go for ethics advice. The training program must include, at least, an initial agency ethics orientation for all employees and annual ethics training for covered employees.

§ 2638.702 Definitions.

For purposes of this subpart:

Agency supplemental standards means those regulations published by an agency in concurrence with the Office of Government Ethics under 5 CFR 2635.105.

Employee includes officers of the uniformed services and special Government employees, as defined in 18 U.S.C. 202(a).

Federal conflict of interest statutes means 18 U.S.C. 202–203, 205, and 207–209.

Principles means the Principles of Ethical Conduct, Part I of Executive Order 12674, as modified by Executive Order 12731.

Standards means the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635.

§ 2638.703 Initial agency ethics orientation for all employees.

Within 90 days from the time an employee begins work for an agency, the agency must do the following:

(a) *Ethics materials.* The agency must give the employee:

(1) The Standards and any agency supplemental standards to keep or review; or

(2) Summaries of the Standards, any agency supplemental standards, and the Principles to keep.

Note to paragraph (a): If the agency does not give the employee the Standards and any agency supplemental standards to keep, the complete text of both must be readily available in the employee's immediate office area.

(b) *Contact persons.* The agency must give the employee the names, titles, and office addresses and telephone numbers of the designated agency ethics official and other agency officials available to advise the employee on ethics issues.

(c) *One hour to review.* The agency must give the employee at least one hour of official duty time to review the items described above. This one-hour requirement may be reduced by any amount of time the employee receives verbal ethics training in the same 90-day period.

§ 2638.704 Annual ethics training for public filers.

(a) *Covered employees.* Each calendar year, agencies must give verbal ethics training to employees who are required by 5 CFR part 2634 to file public financial disclosure reports.

(b) *Content of training.* Agencies are encouraged to vary the content of verbal training from year to year but the training must include, at least, a review of:

(1) The Principles;

(2) The Standards;

(3) Any agency supplemental standards;

(4) The Federal conflict of interest statutes; and

(5) The names, titles, and office addresses and telephone numbers of the designated agency ethics official and other agency ethics officials available to advise the employee on ethics issues.

(c) *Length and presentation of training.* Employees must be given at least one hour of official duty time for verbal training. The training must be:

(1) Presented by a qualified instructor; or

(2) Prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape.

(d) *Availability of qualified instructor.* A qualified instructor must be available during and immediately after the training. Qualified instructors are:

(1) The designated agency ethics official;

(2) The alternate agency ethics official;

(3) A deputy agency ethics official;

(4) Employees of the Office of Government Ethics (OGE) designated by OGE; and

(5) Persons whom the designated agency ethics official (or his or her designee) determines are qualified to respond to ethics questions raised during the training.

Example 1 to paragraph (d): An agency provides annual ethics training for public filers in a regional office by establishing a video conference link between the regional office and a qualified instructor in the headquarters office. The video link provides for direct and immediate communication between the qualified instructor and the employees receiving the training. Even though the qualified instructor is not physically located in the room where the training occurs, the qualified instructor is available.

Example 2 to paragraph (d): The agency described in the preceding example provides videotaped training instead of training through a video conference link. The employees viewing the videotape are provided with a telephone at the training site and the telephone number of a qualified instructor who is standing by during and immediately after the training to answer any questions. Under these circumstances, a qualified instructor is available.

Example 3 to paragraph (d): In the preceding example, if no telephone had been provided at the training site or if a qualified instructor was not standing by to respond to any questions raised, there would not be a qualified instructor available. Merely providing the phone number of the qualified instructor would not satisfy the requirement that a qualified instructor be available.

(e) *Exceptions.* Verbal training without a qualified instructor available or written training prepared by a qualified instructor will satisfy the verbal training requirement for a public filer (or group of public filers) if one hour of official duty time is provided for the training and:

(1) The designated agency ethics official (or his or her designee) makes a written determination that it would be impractical to provide verbal training with a qualified instructor available; or

(2) The employee is a special Government employee.

Example to paragraph (e)(1): The only public filer in the American Embassy in Ulan Bator, Mongolia is the Ambassador. Because of the difference in time zones and the uncertainty of the Ambassador's schedule, the designated agency ethics official for the State Department is justified in making a written determination that it would be impractical to provide the Ambassador with verbal training. In this case, the Ambassador may receive written training prepared by a qualified instructor.

§ 2638.705 Annual ethics training for other employees.

(a) *Covered employees.* Each calendar year, agencies must train the following employees:

(1) Employees appointed by the President;

(2) Employees of the Executive Office of the President;

(3) Employees defined as confidential filers in 5 CFR 2634.904;

(4) Employees designated by their agency under 5 CFR 2634.601(b) to file confidential financial disclosure reports;

(5) Contracting officers, as defined in 41 U.S.C. 423(f)(5); and

(6) Other employees designated by the head of the agency or his or her designee based on their official duties.

Note to paragraph (a): Employees described above who are also public filers must receive ethics training as provided in § 2638.704.

(b) *Content of training.* The requirements for the contents of annual training are the same as the requirements in § 2638.704(b).

(c) *Length and presentation of training.* The training for covered employees must consist of:

(1) A minimum of one hour of official duty time for verbal training at least once every three years. The verbal training must be presented by a qualified instructor or prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape; and

(2) An amount of official duty time the agency determines is sufficient for written training in the years in which the employee does not receive verbal training. The written training must be prepared by a qualified instructor. The employee's initial ethics orientation may satisfy the written training requirement for the same calendar year.

(d) *Exceptions.* Written ethics training prepared by a qualified instructor will satisfy the verbal training requirement for a covered employee (or group of covered employees) if sufficient official duty time is provided for the training and:

(1) The designated agency ethics official (or his or her designee) makes a written determination that verbal training would be impractical;

(2) The employee is a special Government employee expected to work 60 or fewer days in a calendar year;

(3) The employee is an officer in the uniformed services serving on active

duty for 30 or fewer consecutive days; or

(4) The employee is designated under paragraph (a)(6) of this section to receive training.

§ 2638.706 Agency's written plan for annual ethics training.

(a) The designated agency ethics official (or his or her designee) is responsible for directing the agency's ethics training program. The designated agency ethics official (or his or her designee) must develop a written plan each year for the agency's annual training program.

(b) The written plan must be completed by the beginning of each calendar year.

(c) The written plan must contain:

(1) A brief description of the agency's annual training.

(2) Estimates of the number of employees who will receive verbal training according to the following table:

Employees who will receive verbal training	Number
(i) Public filers. (ii) Employees other than public filers.	

(3) An estimate of the number of employees who will receive written training according to the following table:

Employees who will receive written training	Number
Employees other than public filers who will receive training under § 2638.705(c)(2).	

(4) Estimates of the number of employees who will receive written training instead of verbal training according to the following table:

Employees who will receive written training instead of verbal training	Number
(i) Public filers who qualify for the exception in § 2638.704(e)(1). (ii) Public filers who qualify for the exception in § 2638.704(e)(2). (iii) Employees other than public filers who qualify for the exception in § 2638.705(d)(1). (iv) Employees other than public filers who qualify for the exception in § 2638.705(d)(2). (v) Employees other than public filers who qualify for the exception in § 2638.705(d)(3). (vi) Employees other than public filers who qualify for the exception in § 2638.705(d)(4).	

(d) The written plan may contain any other information that the designated agency ethics official believes will assist the Office of Government Ethics in reviewing the agency's training program.

[FR Doc. 00–3346 Filed 2–11–00; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–98–007]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act (Act) of 1985 and the Pork Promotion, Research, and Consumer Information Order (Order) issued thereunder, this final rule specifies requirements concerning paying and collecting feeder pig and market hog assessments in the regulations. This action adds a section to the regulations which implement the Order to provide that the producer who sells the animal must remit to the National Pork Board (Board) the assessment due if the purchaser of a feeder pig or market hog fails to collect and remit the assessment.

EFFECTIVE DATE: March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and 12988 and Regulatory Flexibility Act and the Paperwork Reduction Act

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect.

The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an Order may file a petition with the Secretary stating that such Order, a provision of such Order or an obligation imposed in connection with such Order is not in accordance with law; and requesting a modification of the Order or an exemption from the Order. Such person is afforded the opportunity for a hearing on the petition. After the Hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which the person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The Administrator of AMS has considered the economic effect of this action on small entities and has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the December 29, 1998, issue of ''Hogs and Pigs,'' USDA's National Agricultural Statistics Service estimates that in 1998 the number of operations with hogs in the United States totaled 114,380. The majority of these operations subject to the Order are considered small businesses under the criteria established by the Small Business Administration. The final rule imposes no new burden on the industry. The Act and Order have payment and collection provisions for assessments. This rule further specifies the responsibility for the collection and remittance of assessments on feeder pigs and market hogs in the regulations. This rule adds a section to the regulations to provide that the producer who sells the animal must remit to the Board the assessment due if the purchaser of a feeder pig or market hog fails to collect and remit the assessment.

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implements the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the information collection requirements contained in this part have been previously approved by OMB and were assigned OMB control number 0851–0093.

Background and Proposed Change

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. However, that rate was increased to 0.35 percent in 1991 (56 FR 51635) and to 0.45 percent effective September 3, 1995 (60 FR 29963). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383, and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, 56 FR 51635, 60 FR 29963, 61 FR 29002, and 62 FR 26205). Assessments began on November 1, 1986.

For purposes of paying, collecting, and remitting assessments under the Order, porcine animals are divided into three categories: (1) Feeder pigs, (2) market hogs, and (3) breeding stock. Section 1230.71(a) provides that producers producing in the United States a porcine animal raised as a feeder pig, market hog, or for breeding stock, that is sold are to pay an assessment on that animal unless the producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal in the same category. Section 1230.71(b)(1) provides that purchasers of feeder pigs and market hogs collect assessments on these animals from the producer. Under § 1230.71 producers selling their own breeding stock must remit assessments to the Board. The Order further provides that for the purpose of collecting and remitting assessments on feeder pigs and market hogs, persons engaged as a commission merchant, auction market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer are deemed to be the purchaser. Commission merchants, auction markets, or livestock markets who sell breeding stock on behalf of producers are required to collect and remit assessments.

Collection and remittance of assessments from sales transactions involving market hogs and breeding stock have been highly successful since the assessment collections became effective in 1986. For example, according to the Board's records, assessments are being collected and remitted on 99 percent of all market hogs slaughtered commercially in the United States each year.

Assessment collection and remittance on market hogs has been efficient and successful primarily because of the limited number of purchasers, *i.e.* meat packers, who purchase hogs from all sizes of production units. This centralization of collection points and their limited number facilitates remittance of assessments to the Board and reduces or eliminates compliance problems. However, in the marketing of feeder pigs, there are significantly greater numbers of purchasers which tend to complicate the collection and remittance process and increase the potential for compliance problems.

The Order contemplates that the producer (seller) will pay the assessment on feeder pigs and the purchaser, who also may be a producer, will collect the assessment due and remit it to the Board. For market hogs, the Order contemplates that the producer (seller) will pay the assessment and the purchaser will collect the assessment due and remit it to the Board.

Due to production and marketing changes within the feeder pig industry, an increasing number of high volume feeder pig production units (producers) are selling feeder pigs to large numbers of producers. Pursuant to § 1230.71(b)(1) each of these producers must collect assessments from the seller and remit them to the Board. According to the Board, many feeder pig producers, regardless of the size of their operation, simplify payment by remitting the assessment on all feeder pigs they sell to facilitate the collection and remittance of assessments. However, the large number of purchasers involved in feeder pig sales complicates the collection and remittance process and makes compliance difficult.

The primary focus concerning collection and remittance problems on feeder pigs are transactions commonly referred to as farm-to-farm sales of feeder pigs. These sales transactions typically involve two producers. Frequently, producers who purchase feeder pigs may not consider themselves to be purchasers under the Act and Order and consequently neither the seller nor the purchaser collects and/or remits assessments due. This is particularly the case in farm-to-farm feeder pig sales where producer purchasers may not consider themselves as purchasers in such transactions and therefore do not believe they are required to collect and remit assessments to the Board.

To clarify the meaning of a purchaser for the purpose of collection and remittance of assessments for the sale of feeder pigs and also for market hogs and to specify that each producer who sells an animal for the first time as a feeder pig or market hog is obligated to pay the required assessment, this rule adds a new section § 1230.113 to the rules and regulations titled ''Collection and Remittance of Assessments for the Sale of Feeder Pigs and Market Hogs.'' That section provides that purchasers of feeder pigs or market hogs shall collect assessments from producers if an assessment is due and shall remit those assessments to the Board pursuant to the provisions of § 1230.71. Failure of the purchaser to collect such assessment from a producer shall not relieve the producer of the obligation to pay the assessment. If the purchaser fails to collect the assessment when an assessment is due pursuant to § 1230.71, the producer (seller) shall remit the total amount of assessments due to the Board as set forth in § 1230.111. This change will facilitate enforcement of assessment collection in the Pork Promotion, Research, and Consumer Information Program.

On July 28, 1999, AMS published in the **Federal Register** (64 FR 40783) a proposed rule which would add a section to the regulations which implement the Order to provide that the producer who sells feeder pigs and market hogs must remit to the National Pork Board the assessments due if the purchasers of the feeder pigs or market hogs fails to collect and remit the assessments. The proposal was published with request for comments by September 27, 1999. Several comments were received—one from the National Pork Board and six from State pork producer associations. All of the comments supported the amendment. They were of the view that the amendment was a positive change, one that would enhance the remittance of checkoff on farm-to-farm sales of feeder pigs and result in easier compliance.

Accordingly, the final rule adds a new section, § 1230.113 to the rules and regulations titled ''Collection and Remittance of Assessments for the Sale of Feeder Pigs and Market Hogs'' which will require producers who sell feeder pigs and market hogs to remit to the National Pork Board the assessments due if the purchaser of the feeder pigs and market hogs fails to collect and remit the assessments.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat

and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR part 1230 is amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Paragraph § 1230.113 is added to read as follows:

§ 1230.113 Collection and remittance of assessments for the sale of feeder pigs and market hogs.

Pursuant to the provisions of § 1230.71, purchasers of feeder pigs or market hogs shall collect assessments from producers if an assessment is due and shall remit those assessments to the Board. Failure of the purchaser to collect such assessment from a producer shall not relieve the producer of the obligation to pay the assessment. If the purchaser fails to collect the assessment when an assessment is due pursuant to § 1230.71, the producer (seller) shall remit the total amount of assessments due to the Board as set forth in § 1230.111.

Dated: February 8, 2000.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 00–3323 Filed 2–11–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE154; Special Conditions No. 23–102–SC]

Special Conditions: Cessna Aircraft Company, Model 525A, High Altitude Operation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Cessna Aircraft Company Model 525A airplane. This airplane will have novel or unusual design features associated with high altitude operation. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, DOT Building, 901 Locust, Kansas City, MO 64106; 816–329–4125, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 1998, Cessna Aircraft Company applied to amend the Model 525 Type Certificate to add a new Model 525A. The Model 525A is a derivative of the Model 525 currently approved under Type Certificate Data Sheet A1WI.

The Cessna Model 525A, a derivative of the Model 525, will be certified for operation to a maximum altitude of 45,000 feet. This will be the first of this series to be approved above 41,000 feet. The certification basis of the Model 525 was primarily 14 CFR part 23, as amended by Amendments 23–1 through 23–40, plus special conditions. This unusually high operating altitude constitutes a novel or unusual design feature for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. Therefore, it is necessary to prescribe special conditions that provide the level of safety to that established by the regulations.

The FAA has previously issued Special Conditions No. 23–ACE–87, to another small turbojet airplane model with requested approval for operation up to 49,000 feet.

The FAA policy is to apply special conditions to part 23 airplanes when the certified altitude exceeds the capability of the oxygen system (in this case, the passenger system). This was the situation for a part 23 turbojet airplane. Thus, the special conditions were deemed to be appropriate for the Cessna Model 525A and provide the basis for formulating the special conditions described below:

Damage tolerance methods are prescribed to assure pressure vessel integrity while operating at the higher altitudes. Crack growth data is used to prescribe an inspection program, which should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 23.571 as amended by Amendment 23–48.

The cabin altitude after failure may not exceed the cabin altitude/time history curve limits shown in Figures 3 and 4.

Continuous flow passenger oxygen equipment is certified for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at these altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression above the 37,000 foot limit of Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilot with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receives oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. The special condition, therefore, requires pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

Type Certification Basis

Under the provisions of § 21.101, Cessna Aircraft Company must show that the Cessna Model 525A meets the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet A1WI or the applicable regulations in effect on the date of application for the change to the Cessna Model 525A. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate Data Sheet A1WI are as follows:

(1) Part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by Amendments 23–1 through 23–40;

(a) In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the Cessna Model 525A must also be shown to comply with the following sections of part 23:

Federal Aviation Regulations §§ 23.331, 23.351, 23.421, 23.423, 23.425, 23.427, 23.939, and 23.1163 as amended by Amendments 23–1 through 23–42;

Federal Aviation Regulations §§ 23.943, 23.951, 23.957, 23.961, 23.967, 23.991, 23.993, 23.997, 23.999, 23.1001, 23.1011, 23.1019, 23.1041, 23.1061, 23.1189, 23.1322, 23.1357, 23.1391, 23.1393, 23.1395, and 23.1445 as amended by Amendments 23–1 through 23–43;

Federal Aviation Regulations §§ 23.305, 23.321, 23.361, 23.397, 23.479, 23.485, 23.613, 23.615, 23.621, 23.731 and 23.1549 as amended by Amendments 23–1 through 23–45;

Federal Aviation Regulations §§ 23.335, 23.337, 23.341, 23.343, 23.345, 23.347, 23.371, 23.393, 23.399, 23.415, 23.441, 23.443, 23.455, 23.457, 23.473, 23.499, 23.561, 23.571, 23.572, 23.611, 23.629, 23.673, and 23.725 as amended by Amendments 23–1 through 23–48;

Federal Aviation Regulations §§ 23.677, 23.723, 23.785, 23.787, 23.791, 23.853, 23.855, 23.1303, 23.1307, 23.1321, 23.1351, 23.1353, 23.1361, and 23.1401 as amended by Amendments 23–1 through 23–49;

Federal Aviation Regulations §§ 23.233, 23.235, 23.1555, and 23.1589 as amended by Amendments 23–1 through 23–50;

Federal Aviation Regulations §§ 23.901, 23.903, 23.929, 23.963, 23.965, 23.1013, 23.1043, 23.1143, 23.1183, 23.1191, and 23.1337 as amended by Amendments 23–1 through 23–51;

(2) Federal Aviation Regulations part 36 effective December 1, 1969, as amended by Amendments 36–1 through the amendment in effect at the time of TC issuance.

(3) Federal Aviation Regulations part 34 effective September 10, 1990, as amended by Amendment 34–1, Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes.

(4) Special Conditions as follows:

(a) 23–ACE–55, additional requirements for engine location, performance, characteristics, and protection of electronic systems from lightning and high intensity radiated electromagnetic fields (HIRF).

(b) Special conditions adopted by this rulemaking action.

(5) Exemption: Exemption number 5759 granted. Model 525A to use Federal Aviation Regulations § 25.181 in lieu of damping criteria of Federal Aviation Regulations § 23.181(b).

(6) Compliance with ice protection will be demonstrated in accordance with Federal Aviation Regulations § 23.1419.

Because the Administrator has found that the applicable airworthiness regulations (*i.e.,* part 23) do not contain adequate or appropriate safety standards for the Cessna Model 525A because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 525A must comply with the part 23 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 23 noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by § § 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model 525A will incorporate the following novel or unusual design feature: The methods used to ensure pressure vessel integrity and to provide ventilation, air conditioning, and pressurization will be unique due to the operating altitude of this airplane.

Discussion of Comments

A notice of proposed special conditions No. 23–99–01–SC for the Cessna Aircraft Company Model 525A airplanes was published in the **Federal Register** on September 13, 1999 (64 FR 49413). No comments were received.

Applicability

As discussed above, these special conditions are applicable to the Cessna Model 525A. Should the Cessna Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Cessna Aircraft Company Model 525A airplane.

1. Pressure Vessel Integrity

(a) The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph 4 (Pressurization), of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

(b) Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

2. Ventilation

In addition to the requirements of § 23.831(b), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue and to provide reasonable passenger comfort during normal

operating conditions and in the event of any probable failure of any system that could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered recirculated air, based on the volume and composition at the corresponding cabin pressure altitude of no more than 8,000 feet.

3. Air Conditioning

In addition to the requirements of § 23.831, the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

(a) After any probable failure, the cabin temperature/time history may not exceed the values shown in Figure 1.

(b) After any improbable failure, the cabin temperature/time history may not exceed the values shown in Figure 2.

4. Pressurization

In addition to the requirements of § 23.841, the following apply:

(a) The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(1) Any probable malfunction or failure of the pressurization system, in conjunction with any undetected, latent malfunctions or failures, must be considered.

(2) Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area that produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

(b) The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(2) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air-conditioning, electrical source(s), etc.) that affects pressurization.

(3) Complete loss of thrust from all engines.

(c) In showing compliance with paragraphs 4a and 4b of these special conditions (Pressurization), it may be assumed that an emergency descent is made by an approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

Note: For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that Cessna must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

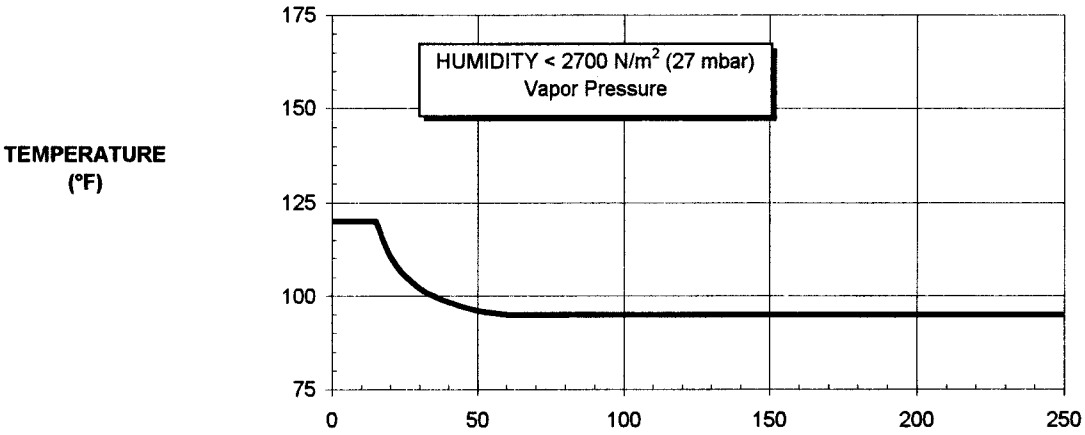
5. Oxygen Equipment and Supply

(a) In addition to the requirements of § 23.1441(d), the following applies: A quick-donning oxygen mask system with a pressure-demand, mask mounted regulator must be provided for the flightcrew. It must be shown that each quick-donning mask can, with one hand and within 5 seconds, be placed on the face from its ready position, properly secured, sealed, and supplying oxygen upon demand.

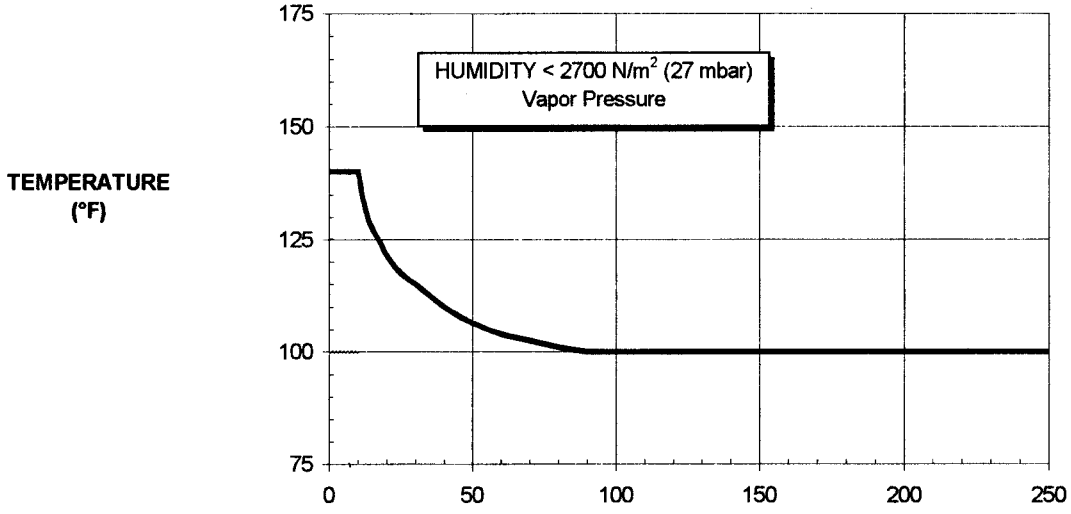
(b) In addition to the requirements of § 23.1443, the following applies: A continuous flow oxygen system must be provided for each passenger.

(c) In addition to the requirements of § 23.1445, the following applies: If the flightcrew and passengers share a common source of oxygen, a means to separately reserve the minimum supply required by the flightcrew must be provided.

BILLING CODE 4910–13–P



TIME - TEMPERATURE RELATIONSHIP
FIGURE 1



TIME - TEMPERATURE RELATIONSHIP
FIGURE 2

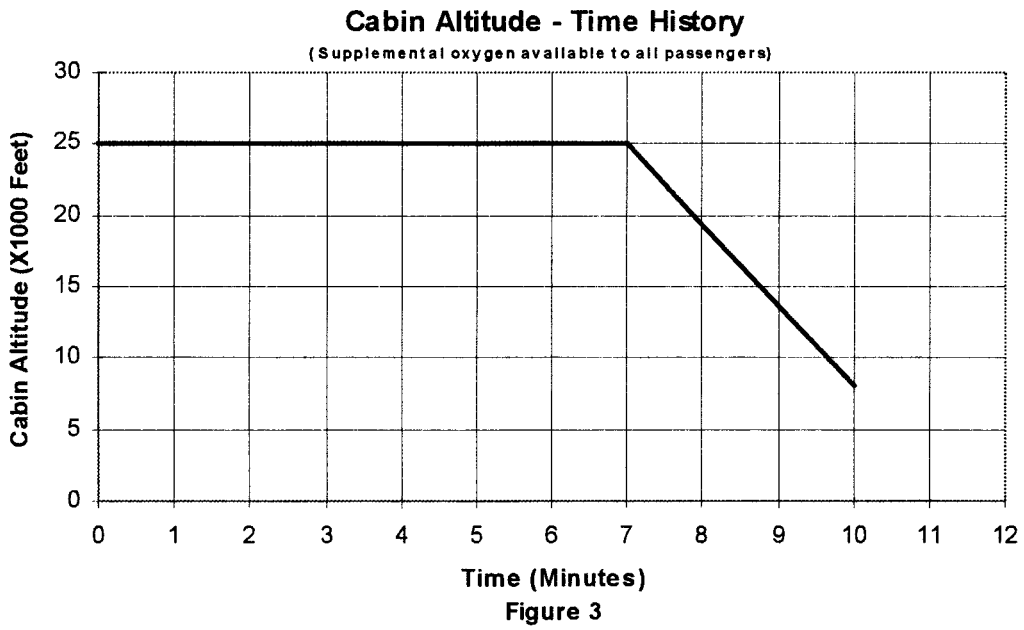


Figure 3

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

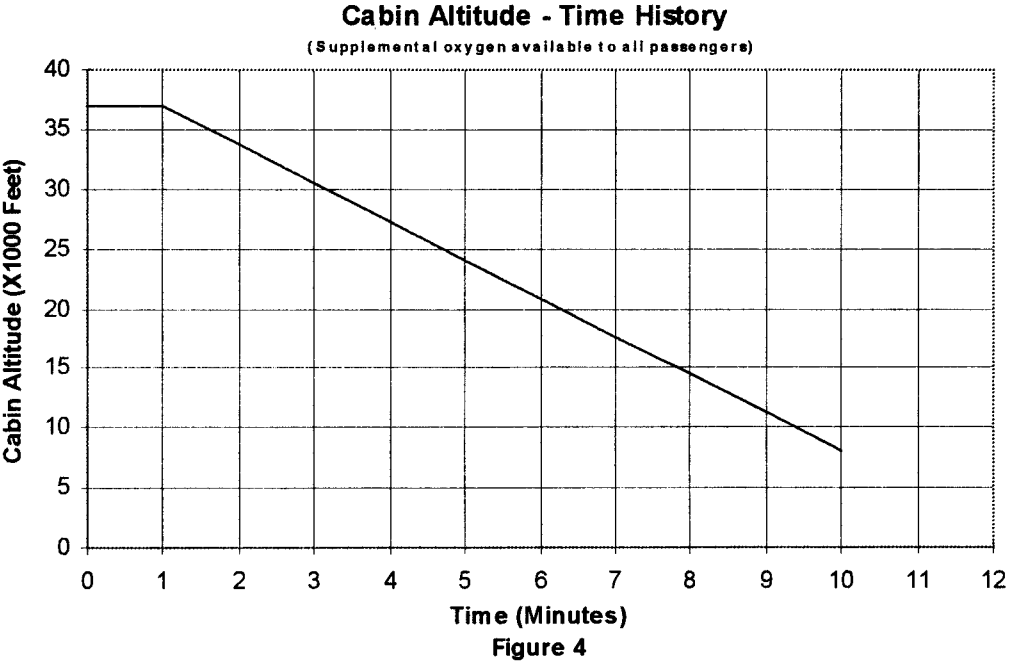


Figure 4

NOTE: For figure 4, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Issued in Kansas City, Missouri on January 28, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–3301 Filed 2–11–00; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–11]

Establishment of Class D Airspace; Jackson, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class D surface area at Jackson Hole Airport, Jackson, WY. The effect of this action is to provide controlled airspace to accommodate the procedures associated with the operation of a new Airport Traffic Control Tower (ATCT).

EFFECTIVE DATE: 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 99–ANM–11, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On November 15, 1999, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by establishing the Jackson, WY, Class D surface area (64 FR 61804). This establishment of the Class D area is in support of a new ATCT under construction at the Jackson Hole Airport, Jackson, WY. The FAA establishes Class D airspace where necessary to contain aircraft transitioning between the terminal and en route environments. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class D surface airspace areas are published in Paragraph 5000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes a Class D surface area in the vicinity of Jackson, WY. The intended effect of this rule is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) and Visual Flight Rules (VFR) at Jackson Hole Airport and between the terminal and en route transition states.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 General

* * * * *

ANM WY D Jackson, WY [New]

Jackson Hole Airport, WY
(Lat. 43°36′24″ N, long. 110°44′17″ W)

That airspace extending upwards from the surface to and including 8,900 feet MSL within a 4.3-mile radius of the Jackson Hole Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on February 1, 2000.

Daniel A. Boyle,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 00–3382 Filed 2–11–00; 8:45 am]

BILLING CODE 4910–13–M

POSTAL SERVICE

39 CFR Part 111

Experimental Ride-Along Rate for Periodicals Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document provides notice that the Governors of the Postal Service have approved a two-year experiment allowing material that would otherwise qualify as Standard Mail (A) to ''Ride-Along'' with Periodicals mail for a flat rate of $0.10 per piece. This notice also establishes basic requirements and procedures for mailing Ride-Along material.

EFFECTIVE DATE: February 26, 2000.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, 202–268–5188; or Joel Walker, 202–268–3340.

SUPPLEMENTARY INFORMATION: Under current Postal Service standards, Periodicals publications cannot contain certain types and amounts of advertising. For example, items such as cosmetic or perfume samples cannot be mailed at Periodicals postage rates. Also excluded is anything that is not comprised of printed sheets of paper or paper-like material; for example, a swatch of fabric, a pacquette of hand cream, or a CD–ROM.

All advertising matter or other enclosures or attachments that do not meet the requirements for mailing at Periodicals rates can be attached to the publication or included as enclosures but are charged Standard Mail (A) postage rates. The rate is computed as if the matter is a stand-alone piece of Standard Mail (A), even though the Standard Mail (A) matter is processed and delivered along with the rest of the Periodicals publication.

These standards require the mailer to pay processing and delivery costs for two pieces (the Periodicals publication and the Standard Mail (A) material) even though the Postal Service incurs processing and delivery costs for only one piece. Periodicals mailers maintain that this extra postage discourages advertisers from including certain kinds of advertisements in their publications. Some publishers work around this problem by including the Standard Mail (A) matter only in the copies that are sold at newsstands, thereby avoiding completely the extra postage costs.

In December 1996, the Periodicals Advisory Group (PAG), an industry group comprised of publishers and printers, recommended that the Postal Service investigate the idea of a reduced rate of postage for Standard Mail (A) material that could be combined with all Periodicals subclasses. This recommendation was supported by the Magazine Publishers of America and the American Business Press.

Acting on this recommendation, on September 27, 1999, pursuant to 39 U.S.C. 3623, the Postal Service filed with the Postal Rate Commission a request for a decision recommending an experimental ''Ride-Along'' classification and rate for Periodicals mail. The request was designated as Docket No. MC2000–1 by the Commission. Based on a settlement agreement reached among the parties, the Commission recommended the experimental classification and rate on February 3, 2000. This recommendation was approved by the Governors of the Postal Service on February 8, 2000, and the Board of Governors set February 26, 2000, as the implementation date for the experiment, which will last two years.

The experiment will allow a single Standard Mail (A) Ride-Along piece in a Periodicals host publication. The Ride-Along piece will be charged a flat postage rate of $0.10 per copy. There are very specific physical requirements for the Ride-Along piece, which are summarized below and detailed in the amendments to the Domestic Mail Manual (DMM) that are included in this notice. The Ride-Along postage is added separately, so that the addition of a Ride-Along piece does not affect the weight, advertising percentage, or postage for the Periodicals host piece. This experiment does not affect or change current standards for Standard Mail (A) enclosures in Periodicals.

The duration of this experiment is two years. Revenue and costs for this experiment will be attributed to Periodicals mail. The classification changes resulting from the experiment are summarized below and are detailed in the additions to the DMM included with this notice.

Over the course of the experiment, the Postal Service will collect appropriate data to determine the feasibility of a permanent classification change. Mailers also will be required to submit a sample of the host and Ride-Along mailpiece and will be asked to complete a simple questionnaire regarding the mailpiece. During the experiment, these sample mailpieces will be available for public inspection via the Manager, Pricing, 475 L'Enfant Plaza, SW, Room 6670, Washington, DC 20260–2406.

Periodicals mailers will be required to use an alternate postage statement (PS Form 3541–RX, 3541–NX, or 3541–NCX, as appropriate) so that the Postal Service can collect data on Ride-Along attachments or enclosures. No foreign copies will be reported on the Ride-Along statements, as Ride-Along pieces are not permitted in foreign copy mailings. Foreign copies and other mailings of copies without a Ride-Along enclosure or attachment will be mailed as a separate edition on regular Forms 3541–R, 3541–N, and 3541–NC. Monthly postage statements may not be used to report Ride-Along mailings.

These experimental postage statements will be used only when publishers are claiming copies with the Ride-Along rate. All copies within the

mailing must contain the same Ride-Along enclosure or attachment. Ride-Along enclosures of different weights or different contents must be reported on separate postage statements.

Summary of Requirements for Ride-Along Classification Periodicals Host Pieces

This classification change applies to all subclasses of Periodicals, including pieces mailed at Regular, In-County, Nonprofit, Classroom, and Science-of-Agriculture rates. The addition of a Ride-Along Standard Mail (A) piece cannot change the shape, processing category or affect the uniform thickness of the host piece. In addition, for pieces claiming automation discounts, the addition of the Ride-Along cannot change the host piece's processing method (automation letter, FSM 881 flat, or FSM 1000 flat) or automation compatibility (*e.g.,* turning ability and deflection, flexibility, rigidity). Publications that are automation compatible and claim automation discounts before the addition of the Ride-Along piece must remain within the constraints of the automation requirements of the host publication in order to use the Ride-Along rate and claim the automation discounts.

Ride-Along Pieces Must Be Eligible for Standard Mail (A) Rates

This classification change is applicable to Standard Mail (A) material (advertising or otherwise) attached to or enclosed with the Periodicals host copy. A flat rate of $0.10 per copy is charged for this attachment or enclosure. Under the experiment, only one Ride-Along piece can be attached to a single host copy. Mailers desiring to mail multiple Standard Mail (A) attachments or enclosures with their Periodicals copies can continue to use the current standards, which require paying postage at full Standard Mail (A) rates, or may choose to pay the Ride-Along rate for the first attachment or enclosure and Standard Mail (A) rates for subsequent attachments and enclosures. If mailers choose the latter, the Ride-Along requirements apply.

The Ride-Along piece cannot exceed 3.3 ounces, and the weight of the Ride-Along piece cannot exceed the separate weight of the Periodicals host publication. The Ride-Along enclosure or attachment can be letter-size or flat-size, as long as the Ride-Along does not change the shape or affect the uniform thickness of the host piece. All pieces within a Periodicals mailing must contain the same Ride-Along piece. Mailers are encouraged to use common sense in the selection and preparation of Ride-Along pieces to ensure the proper handling and delivery of the mail. The Postal Service will be examining the sample pieces provided by mailers and will be monitoring operations to determine compliance with the requirements and whether any unexpected increases in costs are being caused as a result of Ride-Along pieces. The Postal Service will notify the mailer of any noncompliance with the requirements and will not accept future mailings of the same type. The Postal Service will work with the mailer to remedy noncompliance. The Postal Service also may determine that a change in the requirements is necessary because of unexpected cost increases and therefore reserves the right to amend these standards during the course of the experiment.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to Domestic Mail Manual G094, which are incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Add the following sections to the Domestic Mail Manual as follows:

DOMESTIC MAIL MANUAL

* * * * *

G GENERAL INFORMATION

[Add new G090 to read as follows:]

G090 Experimental Classifications and Rates

[Add new G094 to read as follows:]

G094 Ride-Along Rate for Periodicals

1.0 BASIC ELIGIBILITY

1.1 Description

The standards in G094 apply to Standard Mail (A) material paid at the experimental Periodicals Ride-Along rate that is attached to or enclosed with Periodicals mail. All Periodicals subclasses (Regular, Science of Agriculture, Nonprofit, Classroom, and In-County) are eligible to use the experimental Ride-Along rate.

1.2 Basic Standards

A limit of one Ride-Along piece may be attached to or enclosed with an individual copy of Periodicals mail. In addition, Ride-Along pieces eligible under G094 must:

a. Be eligible to be mailed as Standard Mail (A).

b. Not exceed any dimensions of the host publication.

c. Not exceed 3.3 ounces or the weight of the host publication.

d. Not obscure the title of the publication or the address label.

Note: If more than one Ride-Along type piece is attached or enclosed, mailers have the option of paying Standard Mail (A) postage for all the enclosures or attachments, or paying the Ride-Along rate for the first attachment or enclosure and Standard Mail (A) rates for subsequent attachments and enclosures.

1.3 Physical Characteristics

The host Periodicals piece and the Ride-Along piece must meet the following physical characteristics where applicable:

a. The Ride-Along piece contained within a publication (bound or unbound) must be securely affixed in a manner that prevents detachment during postal processing. A loose Ride-Along enclosure with a bound publication must be enclosed in a full wrapper, polybag, or envelope with the publication. A loose Ride-Along enclosure with an unbound publication must be combined with and inserted within the publication. If the Ride-Along piece is included outside the unbound publication, the publication and the Ride-Along piece must be enclosed in a full wrapper, poly bag, or envelope.

b. A Periodicals piece (automation and nonautomation) with the addition of a Ride-Along piece must meet the standards for uniformity (C820.7), and maintain the same shape, processing category (flat or letter) as it had before the addition of the Ride-Along attachment or enclosure.

c. A Periodicals piece with a Ride-Along piece that claims automation discounts must maintain the same processing category (automation letter, FSM 881 flat, or FSM 1000 flat) and automation-compatibility (C810 and C820), as applicable, as it had before the addition of the Ride-Along attachment or enclosure. For example:

(1) If, due to the inclusion of a Ride-Along piece, an FSM 881 compatible host piece can no longer be processed on the FSM 881, but must be processed on an FSM 1000, that piece must pay either the appropriate Periodicals nonautomation rate plus the Ride-Along rate or the appropriate Periodicals automation rate for the host piece and

the appropriate Standard Mail (A) rate for the attachment or enclosure.

(2) If, due to the inclusion of a Ride-Along piece, an FSM 1000 compatible host piece can no longer be processed on the FSM 1000, but must be processed manually, that piece must pay either the appropriate Periodicals nonautomation rate plus the Ride-Along rate or the appropriate Periodicals nonautomation rate for the host piece and the appropriate Standard Mail (A) rate for the attachment or enclosure.

(3) If, due to the inclusion of a Ride-Along piece, an automation letter host piece can no longer be processed as an automation letter, that piece must pay the appropriate Periodicals nonautomation rate plus the Ride-Along rate or the appropriate Periodicals nonautomation rate for the host piece and the appropriate Standard Mail (A) rate for the attachment or enclosure.

1.4 Marking and Endorsements

The endorsement ''Ride-Along Enclosed'' must be placed on or in the host publication if it contains an enclosure or attachment paid at the Ride-Along rate. If placed on the outer wrapper, polybag, envelope, or cover of the host publication, the marking must be set in type no smaller than any used in the required ''POSTMASTER: Send change of address * * *'' statement. If placed in the identification statement, the marking must meet the applicable standards. The marking must not be on or in copies not accompanied by a Ride-Along attachment or enclosure.

2.0 RATES

Each piece mailed under the standards in G094 receives a $0.10 per copy rate in addition to the postage for the Periodicals host piece.

3.0 MAILER REQUIREMENT

When mailing Ride-Along attachments or enclosures, publishers must submit the following:

a. Two copies of the applicable alternative Postage Statement (Form 3541–RX, 3541–NX, or 3541–NCX). Different Ride-Along pieces are considered separate mailings and must have different postage statements.

b. A sample of the Periodicals publication with the Ride-Along attachment or enclosure, in addition to the current required marked copy, if applicable.

c. A completed data collection questionnaire.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–3298 Filed 2–11–00; 8:45 am]

BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–39–1–7454, FRL–6534–9]

Approval and Promulgation of Implementation Plans; State of New Mexico; Approval of Revised Maintenance Plan for Albuquerque/ Bernalillo County; Albuquerque/ Bernalillo County, NM; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On December 20, 1999 (64 FR 71027), EPA published a direct final approval of a revision to the New Mexico State Implementation Plan which revised the Albuquerque Carbon Monoxide maintenance plan approved in 1996. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The EPA stated in the direct final rule that if EPA received adverse comment by January 19, 2000, EPA would publish a timely withdrawal in the **Federal Register**. The EPA subsequently received adverse comments on the direct final rule. Therefore, EPA is withdrawing the direct final approval action. The EPA will address the comments in a subsequent final action based on the parallel proposal also published on December 20, 1999 (64 FR 71086). As stated in the parallel proposal, EPA will not institute a second comment period on this action.

DATES: The direct final rule published December 20, 1999 (64 FR 71027) is withdrawn as of February 14, 2000.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment by calling the person listed below at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Matthew Witosky of the EPA Region 6 Air Planning Section at (214) 665–7214.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the Rules and Regulations section and the proposed rule located in the Proposed Rules section of the December 20, 1999, **Federal Register**.

Dated: February 2, 2000.

Gregg A. Cooke,

Regional Administrator, Region 6.

Therefore the amendment to 40 CFR part 52, § 52.1620, published in the **Federal Register** December 20, 1999 (64 FR 71027), which was to become effective February 18, 2000, is withdrawn.

[FR Doc. 00–3216 Filed 2–11–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–6535–2]

Extending Operating Permits Program Interim Approval Expiration Dates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action amends the operating permits regulations of EPA. Those regulations were originally promulgated on July 21, 1992. These amendments extend up to June 1, 2002, all operating permits program interim approvals. This action will allow permitting authorities to combine the operating permits program revisions necessary to correct interim approval deficiencies with program revisions necessary to implement the revisions that are anticipated to be promulgated in late 2001.

DATES: The direct final amendments will become effective on March 30, 2000. The direct final amendments will become effective without further notice unless EPA receives relevant adverse comments on or before March 15, 2000. Should the Agency receive such comments, it will publish a timely withdrawal informing the public that this rule will not take effect.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–93–50 (see docket section below), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Docket. Supporting material used in developing the proposal and final regulatory revisions is contained in Docket Number A–93–50. This docket is

available for public inspection and copying between 8:30 a.m. and 5:30 p.m., Monday through Friday, at the address listed above, or by calling (202) 260–7548. The Docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Roger Powell, Mail Drop 12, United States Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (telephone 919-541–5331, e-mail: powell.roger@epa.gov).

SUPPLEMENTARY INFORMATION: A companion proposal to this direct final rule is being published in the **Federal Register**. If relevant adverse comments are timely received by the date specified in this action, EPA will publish a document informing the public that this rule will not take effect and the comments will be addressed in a subsequent final rule based on the proposed rule. If no relevant adverse comments on this direct final rule are timely filed, then the direct final rule will become effective on March 30, 2000, and no further action will be taken on the companion proposal published today.

I. Background

On August 29, 1994 (59 FR 44460) and August 31, 1995 (60 FR 45530), EPA proposed revisions to the part 70 operating permits regulations. Primarily, the proposals addressed changes to the system for revising permits. A number of other less detailed proposed changes were also included. Altogether, State and local permitting authorities will have a complicated package of program revisions to prepare in response to these changes once promulgated. The part 70 revisions are anticipated to take place in late 2001.

Contemporaneous with permitting authorities revising their programs to meet the revised part 70, many programs have been granted interim approval which will require permitting authorities to prepare program revisions to correct those deficiencies identified in the interim approval action. The preamble to the August 31, 1995, proposal noted the concern of many permitting authorities over having to revise their programs twice; once to correct interim approval deficiencies, and again to address the revisions to part 70. In the August 1995 preamble, the Agency proposed that States with interim approval ''* * * should be allowed to delay the submittal of any program revisions to address program deficiencies previously listed in their notice of interim approval until the deadline to submit other changes required by the proposed revisions to part 70'' (60 FR 45552). The Agency also proposed ''* * * to exercise its discretion under proposed § 70.4(i)(1)(iv) to provide States 2 years to submit program revisions in response to the proposed part 70 revisions * * *'' (60 FR 45551).

II. Discussion

A. Purpose of Interim Approval Extensions

On October 31, 1996 (61 FR 56368), EPA amended § 70.4(d)(2) to allow the Administrator to grant extensions to interim approvals so permitting authorities could take advantage of the opportunity to combine program revisions as proposed August 31, 1995. The Agency does not believe, however, that the August 31, 1995 blanket proposal to extend all interim approval program revision submittal dates until up to 2 years after part 70 is revised is appropriate. Program deficiencies that caused granting of interim approval of permitting programs vary from a few problems that can be easily corrected to complex problems that will require regulatory changes and, in some cases, legislative action. Where an undue burden will be encountered by developing two program revisions, combining program revisions and thus granting a longer time period for submission of the program revision to correct interim approval deficiencies is warranted. Where no such burden will occur, the Agency encourages permitting authorities to proceed with correcting their interim approval program deficiencies and not wait for the revised part 70.

Due to several controversial issues, the revisions to part 70 have been delayed beyond the date contemplated by the August 31, 1995 proposal. For permitting authorities to be able to combine program revisions, an agency's program interim approval cannot expire. The Agency must therefore extend any interim approval that may expire before the part 70 revisions are promulgated.

B. Original Action

In the original October 31, 1996, action addressing this subject, all interim approvals granted prior to the date of issuance of a memorandum announcing EPA's position on this issue (memorandum from Lydia N. Wegman to Regional Division Directors, ''Extension of Interim Approvals of Operating Permits Programs,'' June 13, 1996) were extended by 10 months. This action was to encourage permitting authorities to proceed with program revisions within their interim approval timeframes, rather than wait for the revised part 70. The June 1996 memorandum is in the docket for this action.

The reason for this automatic extension was that permitting authorities, upon reading the August 1995 proposed action, may have delayed their efforts to develop program revisions to address interim approval deficiencies because they believed the proposed policy to extend interim approvals until revised part 70 program revisions are due would be adopted for all programs. The EPA has been informed that this was the case in many States. Approximately 10 months passed since the August 1995 proposal until the June 1996 memorandum was issued. The additional 10-month extension to all interim approvals offset any time lost in permitting authority efforts to develop program revisions addressing interim approval deficiencies. This 10-month extension was not applicable to application submittal dates for the second group of sources covered by a source-category limited interim approval.[1]

C. Process for Combining Program Revisions

As noted in the June 1996 memorandum, where the permitting authority applies for it after part 70 is revised, EPA may grant a longer extension to an interim approval so that the program revision to correct interim approval program deficiencies may be combined with the program revision to meet the revised part 70. Such a request must be made within 30 days of promulgation of the part 70 revisions. This will make it possible for EPA to take a single rulemaking action to adopt new interim approval deadlines for all programs for which such an application has been made.

As required by § 70.4(f)(2), program revisions addressing interim approval deficiencies must be submitted to EPA no later than 6 months prior to the expiration of the interim approval. The dates for permitting authorities to submit their combined program revisions to address both the revised part 70 and the interim approval

[1] Several States have been granted source-category limited interim approvals. Under that type approval, a subset of the part 70 source population is to submit permit applications during the first year of the program. The application submittal period for the remaining sources begins upon full approval of the program. The Agency concludes this second group of sources should still submit permit applications during a period beginning on the original expiration date of a State's interim approval as opposed to any extension of that date.

deficiencies will be 6 months prior to the interim approval expiration dates which will be set through a future rulemaking.

The longer extension allowing combining of program revisions to meet both the revised part 70 and interim approval deficiencies will be based on the promulgation date of the revisions to part 70. If only regulatory changes to a program are needed to meet the revised part 70, the extension may be for up to 18 months after the part 70 revisions. If legislative changes are needed to a program to meet the revised part 70, the extension may be for up to 2 years. As previously noted, the program revision submittal date will be 6 months prior to expiration of the extended interim approval.

III. Interim Approval Extensions

The June 13, 1996, memorandum and the October 31, 1996, action anticipated promulgation of the part 70 revisions no later than early 1997. As a result of not being able to promulgate the revisions to part 70 by early 1997, on August 29, 1997, EPA extended interim approvals a second time (62 FR 45732). In that action, EPA anticipated the part 70 revisions would be promulgated by mid-summer 1998 and thus extended all interim approvals that would have expired before October 1, 1998, up until that date. This would have provided the necessary time for agencies to apply to combine their program revisions and EPA to take action on those requests.

In early 1998 it appeared that the delay in resolution of issues would prevent promulgation of the part 70 revisions until around December 1999. Accordingly, on July 27, 1998 (63 FR 40054), EPA published a direct final rulemaking extending interim approvals until June 1, 2000.

The EPA has resolved the issues associated with the upcoming part 70 revisions; however the Agency finds that several aspects of the program it intends to promulgate are not natural outgrowths of previous proposals. A proposal notice is now being prepared to cover those program aspects and is anticipated to be published in the **Federal Register** in the Spring of 2000. Promulgation of the entire package of part 70 revisions is now anticipated for late 2001.

The EPA believes that the action to extend interim approvals in this rulemaking is necessary because of further delays in promulgation of the part 70 revisions. Due to these delays, all interim approvals will expire before part 70 is revised, thus denying these agencies the opportunity to combine program revisions. The EPA is aware that many States have been expecting to be able to combine the program revision correcting their interim approval deficiencies with the program revision to address the revised part 70. The Agency estimates that it may take until June 1, 2002, to receive all State requests for combining program revisions and to take the necessary rulemaking action to grant the final extension to those interim approvals. This action, therefore, moves all interim approval expiration dates up to June 1, 2002.

IV. Administrative Requirements

A. Docket

The docket for this regulatory action is A–93–50. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that the parties can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials). The docket is available for public inspection at EPA's Air Docket, which is listed under the **ADDRESSES** section of this notice.

B. Executive Order (E.O.) 12866

Under E.O. 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether each regulatory action is ''significant,'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

1. Have an annual effect on the economy of $100 million or more, adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof.

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Pursuant to the terms of E.O. 12866, it has been determined that this action is not a ''significant'' regulatory action because it does not substantially change the existing part 70 requirements for States or sources; requirements which have already undergone OMB review. Rather than impose any new requirements, this action only extends an existing mechanism. As such, this action is exempted from OMB review.

C. Regulatory Flexibility Act Compliance

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities. In developing the original part 70 regulations, the Agency determined that they would not have a significant economic impact on a substantial number of small entities. Similarly, the same conclusion was reached in an initial regulatory flexibility analysis performed in support of the proposed part 70 revisions (a subset of which constitutes the action in this rulemaking). This action does not substantially alter the part 70 regulations as they pertain to small entities and accordingly will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in part 70 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0243. The Information Collection Request (ICR) prepared for part 70 is not affected by the action in this rulemaking notice because the part 70 ICR determined burden on a nationwide basis, assuming all part 70 sources were included without regard to the approval status of individual programs. The action in this rulemaking notice, which simply provides for an extension of the interim approval of certain programs, does not alter the assumptions of the approved part 70 ICR used in determining the burden estimate. Furthermore, this action does not impose any additional requirements which would add to the information collection requirements for sources or permitting authorities.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit

analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the action in this rulemaking does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector, in any one year. Although the part 70 regulations governing State operating permit programs impose significant Federal mandates, this action does not amend the part 70 regulations in a way that significantly alters the expenditures resulting from these mandates. Therefore, the Agency concludes that it is not required by section 202 of the UMRA of 1995 to provide a written statement to accompany this regulatory action.

F. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

G. Applicability of Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1977), applies to any rule that EPA determines

(1) is ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

H. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This rule change will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule change will not create new requirements but will only extend an existing mechanism to allow permitting authorities to more efficiently revise their operating permits programs. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the

regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule does not significantly or uniquely affect the communities of Indian tribal governments because it applies only to State and local permitting programs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by one or more voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and Procedure, Air pollution control, Integovernmental relations.

Dated: February 4, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Appendix A to Part 70 [Amended]

2. Appendix A of part 70 is amended by the following:

a. Revising the date at the end of the third sentence in paragraph (a) under Texas to read ''June 1, 2002''; and

b. Revising the date at the end of the following paragraph's to read ''June 1, 2002'': Paragraph (a) under Alaska, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Rhode Island, Vermont, Virgin Islands, Virginia, West Virginia, and Wisconsin; paragraphs (a), (b), and (c) under Alabama and Nevada; paragraphs (a), (b), (c)(1), (c)(2), (d)(1), and (d)(2) under Arizona; paragraphs (a) through (hh) under California; paragraphs (a) and (e) under Tennessee; and paragraphs (a) through (i) under Washington.

[FR Doc. 00–3205 Filed 2–11–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–6535–8]

Rhode Island: Determination of Adequacy for the State's Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Under the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments, States may develop and implement permit programs for municipal solid waste landfills (MSWLFs) for review and an adequacy determination by the Environmental Protection Agency (EPA). This final rule documents EPA's determination that Rhode Island's MSWLF permit program is adequate to ensure compliance with Federal MSWLF requirements.

EFFECTIVE DATE: The determination of adequacy for the State of Rhode Island shall be effective on February 14, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Hill, United States Environmental Protection Agency, Region 1, One Congress Street, Suite 1100, Mail Code CHW, Boston, MA 02114; telephone number: (617) 918–1398.

SUPPLEMENTARY INFORMATION:

I. Background

On October 9, 1991, the Environmental Protection Agency (EPA) promulgated the ''Solid Waste Disposal Facility Criteria: Final Rule'' (56 FR 50978, Oct. 9, 1991). That rule established part 258 of Title 40 of the Code of Federal Regulations (CFR) (40 CFR part 258). The criteria set out in 40 CFR part 258 include location restrictions and standards for design, operation, groundwater monitoring, corrective action, financial assurance and closure and post-closure care for municipal solid waste landfills (MSWLFs). The 40 CFR part 258 criteria establish minimum Federal standards that take into account the practical capability of owners and operators of MSWLFs while ensuring that these facilities are designed and managed in a manner that is protective of human health and the environment.

Section 4005(c)(1)(B) of subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, requires States to develop and implement permit programs to ensure that MSWLFs will comply with the 40 CFR part 258 criteria. RCRA section 4005(c)(1)(C) requires EPA to determine whether the permit programs that States develop and implement for these facilities are adequate.

To fulfill this requirement to determine whether State permit programs that implement the 40 CFR part 258 criteria are adequate, EPA promulgated the State Implementation Rule (SIR) (63 FR 57025, Oct. 23, 1998). The SIR, which established part 239 of Title 40 of the CFR (40 CFR part 239), has the following four purposes: (1) It spells out the requirements that State programs must satisfy to be determined adequate; (2) it confirms the process for EPA approval or partial approval of State permit programs for MSWLFs; (3) it provides the procedures for withdrawal of such approvals; and (4) it establishes a flexible framework for modifications of approved programs.

Only those owners and operators located in States with approved permit programs for MSWLFs can use the site-specific flexibility provided by 40 CFR part 258, to the extent the State permit program allows such flexibility. Every standard in the 40 CFR part 258 criteria is designed to be implemented by the owner or operator with or without oversight or participation by EPA or the State regulatory agency. States with approved programs may choose to require facilities to comply with the 40 CFR part 258 criteria exactly, or they may choose to allow owners and operators to use site-specific alternative approaches to meet the Federal criteria. The flexibility that an owner or operator may be allowed under an approved State program can provide a significant reduction in the burden associated with complying with the 40 CFR part 258 criteria. Regardless of the approval

status of a State and the permit status of any facility, the 40 CFR part 258 criteria shall apply to all permitted and unpermitted MSWLFs.

To receive a determination of adequacy for a MSWLF permit program under the SIR, a State must have enforceable standards for new and existing MSWLFs. These State standards must be technically comparable to the 40 CFR part 258 criteria. In addition, the State must have the authority to issue a permit or other notice of prior approval and conditions to all new and existing MSWLFs in its jurisdiction. The State also must provide for public participation in permit issuance and enforcement, as required in RCRA section 7004(b). Finally, the State must demonstrate that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved permit program. EPA expects States to meet all of these requirements for all elements of a permit program before it gives full approval to a State's program.

II. State of Rhode Island

On March 18, 1994, Rhode Island submitted a complete application for a determination of adequacy of its MSWLF permit program to EPA. EPA reviewed the application and requested additional information about program implementation. Rhode Island provided this information. As a result of the review process, Rhode Island identified certain deficiencies in its MSWLF permit program regulations, and it proposed revisions to make the program consistent with the Federal minimum criteria under 40 CFR part 258. On March 23, 1995, EPA provided Rhode Island with its comments regarding the application and acknowledged that Rhode Island had proposed to revise the MSWLF permit program regulations. Rhode Island provided EPA with these proposed revisions, subject to public comment, on August 28, 1995. On September 25, 1995, EPA informed Rhode Island that it had: (1) Completed its review of the proposed revisions: and (2) determined that upon their adoption as written, EPA would publish a tentative full determination of adequacy for the State's MSWLF permit program in the **Federal Register**. Before publication of this notice, however, Rhode Island further amended its MSWLF permit program regulations. It made these amendments in order to satisfy certain State law requirements and conform the regulations to certain Rhode Island Department of Environmental Management (RIDEM) recycling requirements, and because of a RIDEM reorganization. The revised MSWLF permit program regulations became effective on January 30, 1997. EPA reviewed these regulations and requested additional information about program implementation, which Rhode Island provided.

Based on its review, EPA tentatively determined that all portions of Rhode Island's MSWLF permit program meet all the requirements necessary to qualify for full program approval and ensure compliance with the 40 CFR part 258 criteria. EPA published the tentative determination as a proposed rule in the **Federal Register** on October 5, 1999 (64 FR 53976).

By finding that Rhode Island's MSWLF permit program is adequate, EPA does not intend to affect the rights of Federally recognized Indian Tribes in Rhode Island, nor does it intend to limit the existing rights of the State of Rhode Island. In addition, nothing in this action should be construed as making any determinations or expressing any position with regard to Rhode Island's audit law (R.I. Gen. Laws sections 42–17.8–1 to 8–8). The action taken here does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Federally authorized, delegated, or approved program resulting from the effect of Rhode Island's audit law.

RCRA section 4005(a) provides that citizens may use the citizen suit provisions of RCRA section 7002 to enforce the 40 CFR part 258 criteria independent of any State enforcement program. EPA expects that any owner or operator complying with provisions in a State program approved by EPA should be considered to be in compliance with the 40 CFR part 258 criteria.

III. Public Comment

During the public comment period on EPA's tentative determination of adequacy for Rhode Island's MSWLF permit program, EPA received nine letters and no requests for a public hearing. All nine of the letters involved concerns about the Central Landfill in Johnston, Rhode Island. EPA is aware of these concerns and is participating on a committee with RIDEM, citizens, state legislators, state representatives, town counselors, the mayor of Johnston, and the landfill operator to address these issues. EPA is satisfied that progress is underway to address these issues. None of the commentors questioned the adequacy of Rhode Island's MSWLF permit program in regard to meeting all of the statutory and regulatory requirements established by RCRA.

IV. Decision

After evaluating Rhode Island's MSWLF permit program, EPA, Region I concludes that the program meets all of the statutory and regulatory requirements established by RCRA. Accordingly, the State of Rhode Island is granted a determination of adequacy of all portions of its MSWLF permit program.

V. Regulatory Assessments

A. Compliance With Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), EPA must determine whether any proposed or final regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has exempted today's action from Executive Order 12866 review.

B. Compliance With Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition,

Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's action implements requirements specifically set forth by the Congress in sections 4005 (c)(1)(B) and (c)(1)(C) of subtitle D of RCRA, as amended, without the exercise of any discretion by EPA. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to today's action.

C. Compliance With Executive Order 13045: Children's Health Protection

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, Apr. 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866: and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. Today's action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

D. Compliance With Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB, in a separately identified section of the preamble to today's action, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's action implements requirements specifically set forth by Congress in sections 4005 (c)(1)(B) and (c)(1)(C) of subtitle D of RCRA, as amended, without the exercise of any discretion by EPA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to today's action.

E. Compliance With Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one State. This action simply determines that the State of Rhode Island's MSWLF permit program is adequate. Thus, the requirements of section 6 of the Executive Order do not apply.

F. Compliance With the Regulatory Flexibility Act

EPA has determined that this determination of adequacy will not have a significant adverse economic impact on a substantial number of small entities. The MSWLF revised criteria in 40 CFR part 258 provide directors of States with approved programs the authority to exercise discretion and to modify various Federal requirements. Directors of approved States may modify certain of these Federal requirements to make them more flexible on either a site-specific or State-wide basis. In many cases, exercise of this flexibility results in a decrease in burden or economic impact upon owners or operators of MSWLFs. Thus, with EPA's determination that the Rhode Island MSWLF permitting program is adequate, the burden on MSWLF owners and operators in that State that are also small entities should be reduced. Moreover, because small entities that own or operate MSWLFs are already subject to the requirements in 40 CFR part 258 (although some small entities may already be exempted from certain of these requirements, such as the groundwater monitoring and design provisions (40 CFR 258.1(f)(1)), today's action does not impose any additional burdens on them.

G. Compliance With the Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Compliance With the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of

their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative, if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. It implements mandates specifically and explicitly set forth by the Congress in sections 4005(c)(1)(B) and (c)(1)(C) of subtitle D of RCRA, as amended, without the exercise of any policy discretion by EPA. In any event, EPA does not believe that this determination of the State program's adequacy will result in estimated costs of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector, in any one year. This is due to the additional flexibility that the State can generally exercise (which will reduce, not increase, compliance costs). Moreover, this determination will not significantly or uniquely affect small governments including Tribal small governments. As to the applicant, the State has received notice of the requirements of an approved program, has had meaningful and timely input into the development of the program requirements, and is fully informed as to compliance with the approved program. Thus, any applicable requirements of section 203 of the Act have been satisfied.

I. Compliance With Executive Order 12898: Environmental Justice

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. EPA does not believe that today's final rule will have a disproportionately high and adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community.

J. Compliance With the National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 258

Environmental protection, Adequacy, Administrative practice and procedure, Municipal solid waste landfills, Non-hazardous solid waste, State permit program approval.

Authority: 42 U.S.C. 6912, 6945, 6949(a).

Dated: January 20, 2000.

Mindy Lubber,

Acting Regional Administrator, Region I.

[FR Doc. 00–3363 Filed 2–11–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. RSPA–99–5137 (HM–208C)]

RIN 2137–AD17

Hazardous Materials Transportation; Registration and Fee Assessment Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the statutorily mandated registration and fee assessment program for persons who transport or offer for transportation certain categories and quantities of hazardous materials. In this final rule, RSPA is: (1) Expanding the criteria for those persons required to register to include all persons who offer for transportation or transport hazardous materials that require placarding (except for those activities of farmers directly in support of farming operations); (2) Adopting a two-tiered fee schedule—$300 for those registrants meeting the U.S. Small Business Administration criteria for defining a small business and $2,000 for all other registrants; and (3) Permitting registration for one, two, or three years on a single registration statement. This final rule is intended to increase funding for the national Hazardous Materials Emergency Preparedness grants program.

EFFECTIVE DATE: May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366–4484, or Ms. Deborah Boothe, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

List of Topics

I. Background

A. Current Registration Program

In 1990, amendments to Federal hazardous materials transportation law, now codified at 49 U.S.C. 5101 *et seq.* (the law), required the Secretary of Transportation to establish a registration program for persons who transport or offer for transportation in commerce certain types and quantities of hazardous materials. The Secretary delegated this authority to RSPA's Administrator (49 CFR 1.53(b)(1)). The registration program enables RSPA to gather information about the transportation of hazardous materials and to fund a grants program to support hazardous materials emergency response planning and training activities by State and local governments.

Section 5108 of the law requires each person who transports or causes to be transported in commerce one or more of the following categories of hazardous materials to file a registration statement with RSPA and pay an annual registration fee:

(1) A highway-route controlled quantity of Class 7 (radioactive) materials;

(2) More than 25 kilograms (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

(3) A package containing more than one liter (1.06 quarts) of a hazardous material the Secretary designates as extremely toxic by inhalation, which has been identified as a material meeting the criteria for a Zone A material that is toxic by inhalation;

(4) A hazardous material in a bulk packaging, container, or tank with a capacity equal to or greater than 13,248 liters (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids; or

(5) A shipment in other than a bulk packaging of 2,268 kilograms (5,000 pounds) or more gross weight of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required.

Section 5108(a)(2) of the law permits RSPA to extend registration requirements to persons who:

(1) Transport or cause to be transported hazardous material in commerce but do not engage in the activities listed above; or

(2) Manufacture, fabricate, mark, maintain, recondition, repair, or test packagings that the person represents, marks, certifies, or sells for use in transporting hazardous materials in commerce.

In addition, § 5108 (g)(2)(A) requires RSPA to set the fee at a minimum of $250 to a maximum of $5000.

In establishing the registration and fee assessment program in 1992, RSPA chose to require registration only by those persons under a statutory obligation to do so. All registrants currently pay the same registration fee regardless of their size, their income, or the extent to which they engage in hazardous materials transportation activities. RSPA imposed the minimum $250 fee on all registrants, plus an additional fee, currently set at $50, to pay for the costs of processing the registration statements, as authorized by 49 U.S.C. 5108(g). (See final rule 57 FR 30630 (July 9, 1992) and current regulations at 49 CFR part 107, subpart G.) The current regulations, in § 107.608(a), require an annual submission of a registration statement.

To ensure that all persons required to register know of and comply with the requirements of the registration program, RSPA has conducted extensive outreach efforts. Approximately 780,000 informational brochures have been distributed through direct mailing campaigns and during presentations to industry. RSPA has annually mailed registration brochures and forms to hazardous materials shippers and carriers newly entered into the Federal Highway Administration's (FHWA) Motor Carrier and Highway Safety census of highway carriers and shippers, and to newly identified shippers and carriers named on the hazardous materials incident reports, (DOT Form F 5800.1). In addition, the registration program has been publicized in trade magazines and industry newsletters, and seven notices of the registration requirements have been published in the **Federal Register**. The registration instructional brochure and form are also available on RSPA's Hazardous Materials Safety internet website: (http://hazmat.dot.gov).

Responsibility for enforcement of the registration requirement is shared by RSPA, the DOT operating administrations, and state and local agencies that have assumed this role as part of a cooperative Federal/state partnership. Inspections conducted by RSPA, FHWA, and the Federal Railroad Administration routinely have included a check for registration. We believe that the rate of compliance with the registration requirements is relatively high. Persons knowing of a violation of the registration requirements should notify an Office of Hazardous Materials Enforcement regional office, a DOT operating administration office, or state or local enforcement authority of the violation.

B. Hazardous Materials Emergency Preparedness (HMEP) Grants Program

1. Purpose and Achievements of the HMEP Grants Program

The HMEP grants program, as mandated by 49 U.S.C. 5116, provides Federal financial and technical assistance, national direction, and guidance to enhance State, local, and tribal hazardous materials emergency planning and training. The HMEP grants program builds on existing programs and supports the working relationships within the National Response System and the Emergency Planning and Community Right-To-Know Act of 1986 (Title III), 42 U.S.C. 11001 *et seq.* The grants are used to develop, improve, and implement emergency plans, to train public sector hazardous materials emergency response employees to respond to accidents and incidents involving hazardous materials, to determine flow patterns of hazardous materials within a State and between States, and to determine the need within a State for regional hazardous materials emergency response teams.

The HMEP grants program encourages the growth of hazardous materials planning and training programs of State, local, and tribal governments. To ensure this growth, §§ 5116(a)(2)(A) and 5116(b)(2)(A) of the law require a State or Native American tribe applying for a grant to certify that the amount it spends on hazardous materials planning and training, not counting Federal funds, will at least equal the average amount spent for these purposes during the last two fiscal years. The HMEP grants, therefore, represent additional funds that supplement the amount already being provided by the State or tribe. To further encourage growth in planning and training funds, § 5116(e) limits the Federal share to 80 percent of the costs of the additional activity for which the grants are made, thus requiring the State or tribe to provide 20 percent of these additional costs. By accepting an HMEP grant, the State or tribe commits itself not only to maintaining its previous level of support, but increasing that level by an amount representing 20 percent of the funds newly expended on grant-supported activities each year. For

example, an HMEP grant of $100,000 requires an additional commitment of $25,000 in State or tribal funds over the average amount spent by the agency during the previous two years. These additional State or tribal funds may be provided in the form of direct fiscal support or through the provision of in-kind resources.

Since 1993, all States and territories and 35 Native American tribes have been awarded planning and training grants totaling $47.1 million. These grants, which supplement funds from States, tribes, and local agencies, helped to:

- Train 694,000 hazardous materials responders;
- Conduct 2,220 commodity flow studies;
- Write or update more than 19,600 emergency plans over the last 5 years;
- Conduct 3,600 emergency response exercises; and
- Assist 8,910 local emergency planning committees (LEPCs) over the last 5 years.

In addition, over the past six years, HMEP grants program funds have been used to support the following related activities in the total amounts indicated:

- $2.3 million for development and periodic updating of a national curriculum of courses necessary to train public sector emergency response and preparedness teams. The curriculum guidelines, developed by a committee of Federal, State, and local experts, include criteria for establishing training programs for emergency responders at five progressively more skilled levels: First responder awareness, first responder operations, hazardous materials technician, hazardous materials specialist, and on-scene commander.
- $1.7 million to monitor public sector emergency response planning and training for an accident or incident involving hazardous materials, and to provide technical assistance to a State or Native American tribe for carrying out emergency response training and planning for an accident or incident involving hazardous materials.
- $3.3 million for periodic updating and distribution of the North American Emergency Response Guidebook.
- $750,000 for supplemental grants to the International Association of Fire Fighters (IAFF) to train instructors to conduct hazardous materials response training programs.

2. Increased Funding of the HMEP Grants Program

In each of the eight registration years since 1992, RSPA has received approximately 27,000 registration statements and an average of $6.8 million to support the HMEP grants program. This has provided an average of $6.4 million annually for planning and training grants, only 50% of the $12.8 million authorized by law for these purposes ($5 million for planning and $7.8 million for training). As discussed in RSPA's April 15, 1999, notice of proposed rulemaking (NPRM) (64 FR 18786), the HMEP grants program has accomplished much in a short time, but many needs are not being met. The HMEP training grants are essential for providing adequate training of persons throughout the nation who are responsible for responding to emergencies involving the release of hazardous materials, both through direct Federal financial assistance for such training and by encouraging the provision of additional state and local funds for this purpose.

In a recent review, RSPA estimated that 800,000 shipments of hazardous materials make their way through the national transportation system each day. These shipments range in size and type from single small parcels of consumer commodities, such as flammable adhesives and corrosive paint strippers, to bulk shipments of gasoline in cargo tank motor vehicles and flammable or toxic gases in railroad tank cars. Such shipments are transported in every State, every day of the year, and it is impossible to predict with any degree of certainty when and where an incident may occur. The potential threat requires the development of emergency plans and training of emergency responders on the broadest possible scale. Yet, RSPA also believes there are over 2 million emergency responders requiring initial training or periodic recertification training, including 250,000 paid firefighters, 800,000 volunteer firefighters, 725,000 law enforcement officers, and 500,000 emergency medical services (EMS) providers.

The continuing need for training for emergency response personnel, whether paid or volunteer, is partially the result of a relatively high rate of turnover caused by the extraordinary demands expected of response providers in terms of time, physical exertion, and emotional stress. Emergency response personnel must be available at any time and at a moment's notice to respond to situations that by their very nature are unpredictable and pose a threat not only to the public in general but to the responder in particular. This turnover means that each year there is a significant number of recently recruited responders who must be trained at the most basic level. In addition, training at more advanced levels is not simply desirable; it is essential if emergency response personnel capable of effectively and safely responding to serious releases of hazardous materials are to be provided. For this reason, RSPA advocates advanced training at the first responder operations, hazardous materials technician, hazardous materials specialist, and on-scene commander levels in every emergency response team in the country. An increase in the funds available to the HMEP Grants Program will encourage the State, tribal, and local agencies to provide this more advanced, and more expensive, training.

The unmet needs of States and Native American tribes for financial assistance in emergency preparedness planning and training for transportation-related incidents involving hazardous materials are great. RSPA is determined to narrow the current gap between the authorized grant levels and the available Federal funds by its careful targeting of the additional funds collected as a result of this rulemaking. RSPA believes that it is essential to increase the awards for emergency planning and training grants to the full $12.8 million authorized by the law and, at the same time, maintain current funding of the additional activities supported by the HMEP Grants Program described above.

In FY 2000, RSPA intends to provide from registration fees $14.3 million for:

- Training and planning grants ($12.8 million);
- Grants support to certain national organizations to train instructors to conduct hazardous materials response training programs ($250,000);
- Revising, publishing, and distributing the North American Emergency Response Guidebook ($600,000);
- Monitoring and technical assistance ($150,000);
- Continuing development of a national training curriculum ($200,000); and
- Administering the grants program ($300,000).

II. Summary of Proposal To Increase HMEP Funding

To achieve its goal of funding the HMEP grants program activities at $14.3 million, RSPA published an NPRM on April 15, 1999 (64 FR 18786), in which it proposed to expand the definition of those persons required to register and to impose a fee schedule based on the size of a business. RSPA conducted public meetings on May 25, 1999, in Washington, DC, and on June 22, 1999, in Des Moines, Iowa. The closing date for the comment period was extended until July 2, 1999. (64 FR 28135)

In the NPRM, RSPA proposed to require registration by any person, other than a ''farmer,'' who offers for transport or transports a shipment of hazardous materials that requires placarding. RSPA proposed a two-tiered fee schedule ($300 and $2,000), with the lower fee to be imposed on a registrant that meets the Small Business Administration

(SBA) criteria for a small business. The proposed exception for a ''farmer,'' as defined in § 171.8 of the Hazardous Materials Regulations (HMR), is limited to operations in direct support of the farmer's farming operations. RSPA also proposed reducing the processing fee from $50 to $25 in order to bring the aggregate amount collected closer to the amounts needed to process the registration statement and to issue the Certificate of Registration. Finally, RSPA proposed to permit registration for one, two, or three years on a single registration statement.

III. Discussion of Comments and Regulatory Changes

A. General

RSPA received approximately 400 written comments, and 31 persons made oral presentations at the two public meetings. The commenters included representatives of emergency response organizations and LEPCs; individuals engaged in all modes of transportation, agricultural retailing, petroleum distribution, farming, and convenience store operations; and industry associations representing a broad spectrum of businesses that transport or offer for transport hazardous materials.

Many commenters supported the intent of the proposal to fully fund the HMEP grants program. Grant recipients expressed strong support for the proposed changes. The National Association of SARA Title III Program Officials (NASTTPO) expressed strong support for fully funding the HMEP grants program through increased registration fees and stated the need for increased funding at all levels, especially in emergency planning and curriculum development. NASTTPO stated:

> The intent to raise additional funds to enhance support for the National Hazardous Materials Emergency Preparedness (HMEP) Grants Program is commendable and needed. It has been largely through the HMEP Grants program that significant planning actions, training programs and curriculum development have been accomplished that ultimately have better protected the hazardous materials responder, hazardous materials shipper, receiver and user alike. * * * Increased focus and impetus through an enhanced HMEP program are direly needed, particularly in light of potential diminished hazardous materials response support from other federal sources.

The Connecticut State Emergency Response Commission stated, ''We support the proposed rule which would raise additional funds for the National Hazardous Materials Emergency Preparedness (HMEP) Grants Program. Funding from this grant program is extremely important to Connecticut's hazardous materials emergency planning and responder training efforts.''

Emergency responders also strongly supported the proposal. The International Association of Fire Fighters (IAFF) stated:

> The IAFF has developed extensive experience training hazardous materials instructors through other federal grants dating back to 1987. The RSPA program enabled us to expand our instructor training efforts and reach fire service trainers in all regions of the United States. * * * [W]e are able to target responders along common hazardous materials transportation routes and hubs. Our first project year was a tremendous success.

Mr. Bradley D. Robinson, Captain in Charge of Hazmat Operations for the Sioux City Fire Department's Regional HazMat Team and current President of the Iowa Hazardous Materials Task Force, offered strong support for the proposed expansion of the base of registrants and increase in the registration fee. He stated that the:

> * * * funding for that training gets harder and harder, which brings us back to the need to fully fund the HMEP Grants Program. * * * I would like to strongly urge that all of [the] proposed changes to 49 CFR Part 107 be implemented. More importantly, I would like to ask those opposing these changes to join with us, the emergency responders, and accept more of the financial responsibility in training us to properly protect the public and environment from uncontrolled releases of the hazardous materials you use and/or transport. The bulk of financial responsibility of training and planning for your release should not be placed on the backs of the tax paying citizens.

Mr. John Gardner, Fire Marshal of the Chandler, Arizona, Fire Department and a Maricopa County LEPC member, fully supported the proposed expansion of the base of registrants and increased registration fees. He stated, ''Increased funding needs to be provided for increased curriculum development that will ensure the innovation of programs is consistent with the rapidly changing technological and electronic advancements [that] are being made.''

Several industry organizations and associations also expressed their support for fully funding the HMEP grants program. The Hazardous Materials Advisory Council (HMAC) stated, ''We recognize that the current system does not generate the amount of funding that was anticipated when the program was established. Moreover, we support the goal of funding the HMEP Grants Program to the $12.8 million level.''

B. Expansion of Base

In 1995, an Industry Working Group (IWG) facilitated by HMAC provided recommendations on how the registration and fee collection requirements could be improved under Docket HM–208B. Among the IWG's recommendations was the expansion of the registration rule to apply to all shipments for which display of hazard warning placards is required. This IWG recommendation was joined by many industry associations and other persons who provided additional comments to the 1995 proposal. In the April 15, 1999, NPRM, RSPA proposed to expand the base of registrants to include any person who offers for transportation or transports a shipment of hazardous materials for which a hazard warning placard must be displayed on a bulk packaging, freight container, unit load device, transport vehicle or rail car. This proposal attracted both strong support and opposition in the public comments.

Commenters who support the current proposal to expand the base of registrants note that the proposal would simplify compliance and enforcement. For example, HMAC commented that, ''extension of the requirement to register to such parties [that offer or transport any shipment that requires placarding] would greatly simplify the requirement to register; additionally, the requirement to placard is a generally accepted measure of the degree of hazard presented by any specific load.''

The Chemical Manufacturers Association (CMA) also supports RSPA's proposed expansion of the base of registrants to include shippers and carriers of all placarded loads, with the exception of farmers (as defined in 49 CFR 171.8). CMA stated, ''Ease of compliance and simplicity of enforcement are critical components of a successful registration program and CMA believes the placarding requirement will satisfy these conditions.''

The Association of Waste Hazardous Materials Transporters (AWHMT) and the National Tank Truck Carriers (NTTC) support expansion of the base of registrants to include all placarded loads, but oppose the exception proposed for farmers.

A significant number of commenters oppose expansion of the base of registrants to all placarded loads. In particular, petroleum marketers and agricultural retailers and their associations assert that expanding the base to include all placarded loads and increasing the registration fee would place undue burdens on their industries. Over 250 commenters from

the petroleum distribution industry, such as the Petroleum Marketers Association of America (PMAA) and its member companies, expressed opposition to the proposed expansion of the base of registrants and the two-tiered fee structure. Many of these commenters stated that it is not ''fair'' to ''tax'' them to fund the HMEP grants program because they already pay local taxes to fund local firefighters. These commenters stated that they already provide adequate training to their customers and local emergency responders.

The Petroleum Marketers and Convenience Store Association of Kansas also opposes expansion of the base of registrants and any fee increase. It stated that the proposed fee is excessive and favors the ''nation's largest corporations at the expense of small businesses.'' It stated, ''to include small cargo tank operators into a program that should clearly be predicated on interstate commerce, and to require a small convenience store owner to pay the same fees assessed huge corporations is inequitable, at minimum.'' Finally, it stated, ''if DOT feels it must increase Hazmat funding by requiring that anyone hauling a placarded material be included in the program, then the agency should take steps to ensure that all classes of Hazmat transporters are subject to the provisions of the program and consequently required to pay the annual registration fee.''

The Independent Lubricant Manufacturers Association (ILMA) stated, ''this proposed expansion would create paperwork and administrative burdens on independent lubricant manufacturers far out of proportion to the potential benefits of the proposal, particularly in instances where a company might have only a handful of placarded shipments during the course of the year.'' ILMA stated that RSPA could meet its objectives by retaining the current structure of persons required to register and ''a very modest across-the-board fee increase, would suffice to fully fund the HMEP grants program.'' Finally, ILMA did not support the exemption provided to farmers.

The Fertilizer Institute (TFI) also opposes expansion of the registrant base to include placarded loads. TFI stated, ''RSPA fails to demonstrate a need for more registrants and, in any event, including agricultural retailers and others transporting farm inputs as part of the registration program contravenes clear Congressional intent regarding the scope of the registration program.''

The Illinois Fertilizer and Chemical Association (IFCA) opposes lowering the threshold to any placarded load as an unjustified fee increase, stating, ''there is no indication that seasonal shipments of smaller, placarded loads in rural communities pose a substantial hazmat risk to responders.'' IFCA further stated, ''Most [agricultural] retailers also offer or transport placarded loads of pesticides; therefore, exempting only anhydrous ammonia nurse tanks from the registration program would provide no relief whatsoever for 99% of the ag retailers in Illinois.'' RSPA did not propose to except anhydrous ammonia nurse tanks except when operated by farmers in direct support of their farming operations.

Other parties favor even greater extension of the registration requirement. The Iowa Department of Transportation (IDOT) suggested requiring registration by anyone who offers to transport or transports a shipment that is required to be marked and/or placarded, including marine pollutants, class 9 materials and cryogenics, with the exception of farmers. IDOT contends that requiring these persons to register would produce sufficient revenues without implementing two fee levels. IDOT stated, ''By lowering the registration threshold quantity, more offerors and carriers would be required to register. Keep it simple, if you offer or transport HM in quantities that require placarding, or the marine pollutant mark, or the display of identification numbers on placards, white square on point configurations or orange panels you must register.'' Phillips Petroleum Company (Phillips) also proposed expansion of the registration base to include marine pollutants and bulk shipments requiring the hazardous material identification number marking.

Based on its review of comments received in response to the NPRM, and the public meetings, RSPA is adopting the proposal to expand the base of registrants to each person who offers for transport or transports a shipment of hazardous materials for which placarding of a bulk packaging, freight container, unit load device, transport vehicle, or rail car is required. Expansion of the base of persons required to register by including all persons offering or transporting placarded loads recognizes the greater risks posed to health and safety or property by the transportation of hazardous materials in quantities that require placarding. Thus, shippers and carriers involved in the shipment of a placarded load of hazardous materials will bear a fair share of the financial burden that falls on State and local government agencies to develop emergency plans and to train first-on-the-scene responders. Also, by requiring all offerors and transporters of placarded shipments of hazardous materials to register, RSPA will create the most current list of persons engaged in the transportation of appreciable shipments of hazardous materials, one of the primary intentions of the registration requirement.

RSPA has provided one exception to this rule for those activities of a ''farmer'', as defined in § 171.8 of the HMR, that support the farmer's farming operations. However, this is not a blanket exception for all farmers from the registration rule. If a farmer offers for transportation or transports in commerce a hazardous material that is specifically identified in § 5108(a)(1) of the law, or offers for transportation or transports a placarded shipment that is not in direct support of the farmer's farming activities, that farmer must submit a registration statement and pay the required fee.

The proposals to expand the proposed definition of persons required to register to include not only all shipments requiring placarding but also those requiring marking, including marine pollutants, class 9 materials and cryogenics, would not appreciably increase the number of persons required to register. Further, such an approach would make what was intended to be a simplification of the registration requirements more complicated. RSPA has, therefore, chosen not to adopt the suggested expansion of the scope of the registration rule.

The application of generally well understood hazard communication criteria for placarding greatly simplifies the matter of whether a shipper, carrier, or other person is required to register. Simplification of the regulations similarly makes the rule much easier to enforce, thereby further assuring a high rate of compliance.

C. Two-Tiered Fee Structure

In the April 15, 1999 NPRM, RSPA proposed a two-tiered fee schedule under which a company meeting the small business criterion for its category established by the SBA at 13 CFR 121.201 would pay a smaller registration fee than a company that does not meet the SBA criterion. The proposal specified that a small business would pay an annual registration fee of $300, while a larger business would pay $2,000.

Many commenters oppose the two-tiered fee structure, advocating an increased registration fee for all registrants instead. For example, the

International Warehouse Logistics Association suggested, ''If an increase is necessary * * * for the sake of clarity and simplification, we would urge a minimal increase in the registration fee for all registrants rather than a two-tiered plan.'' Similarly, AWHMT opposes the two-tiered fee structure as flawed and difficult to enforce, suggesting as a more equitable approach a minimal incremental increase in the fee across the board, regardless of the size of the business or its hazardous materials operations. IDOT stated that a tiered fee program may be more difficult to implement than expected and stated that ''Basing it on gross revenue of a company's total operation is unfair to say the least. They may have a high gross revenue, but only a small percentage is derived from Hazardous Materials activities.''

The Conference on Safe Transportation of Hazardous Articles, Inc. stated that RSPA should simply, ''Determine the total amount necessary to be collected and divide it by the number of current and prospective registrants under an expanded pool. A two-tiered system would be more difficult to enforce, and presumes that smaller companies have a lesser impact on transportation safety than larger ones.''

Other commenters criticized use of the SBA criteria for small businesses. Morganite Incorporated stated the Environmental Protection Agency categorizes it as a small quantity generator of hazardous waste. While its level of revenues and number of employees is not at all related to the shipment of hazardous materials, Morganite stated that it would be unfair for it to ''be assessed $2000/year for the transportation of these occasional small quantities.'' The Canadian Trucking Alliance (CTA) similarly argued that basing the registration fee ''on a motor carrier's total revenue as opposed to its revenue earned transporting hazardous materials does not appear to be equitable, although it is clearly administratively simple.'' CTA requested that RSPA allow Canadian carriers to use only the revenue earned in the United States to determine whether those motor carriers are classified as a small business under SBA criteria.

Several large entities stated that basing registration fee amounts on the SBA criteria will require them, in essence, to financially subsidize potentially higher-risk, smaller entities. Southwest Solvents & Chemicals stated, ''Generally, larger companies are capable and devote more personnel, time and money to promoting safety and developing proficiency in their operations than do smaller companies.'' It further stated, ''Assuming an increase is justifiable, there is nothing equitable in imposing on larger businesses a 660% increase in fees without asking small businesses to share the load.''

Phillips commented that the proposed fee increase puts an unfair burden for funding the HMEP grants program on larger businesses. Phillips stated, ''As it is currently proposed, the two-tier fee structure would increase the total amount that Phillips and its subsidiaries pay to register from $1,500 to $10,000 annually. * * * Here again, the large corporations are being unfairly burdened.''

Phillips also stated that small businesses are more likely to fail to comply fully with the HMR because they do not employ full-time regulatory compliance staffs. Phillips and other large entities with multiple subsidiaries proposed that a single registration fee should cover both a parent company and its subsidiaries. Alternatively, one commenter from a large business entity suggested that no more than $20,000 should be collected from a family of companies that enjoy common equity or ownership.

Some commenters suggested a third level of registration fees for larger entities that offer relatively smaller amounts of hazardous materials, or who would be near the dividing line between small and larger businesses under SBA criteria. The Utility Solid Waste Activities Group suggested adding a mid-level third tier for entities who cannot satisfy the SBA criteria for a small business but offer or transport ''low volume/low risk hazardous materials.''

A number of commenters expressed the view that RSPA should not base the amount of the registration fee on SBA criteria because that does not consider risk appropriately, and it is not one of the factors explicitly set forth in the statute. Tower Group International stated:

> Whether a registrant is categorized as a small business or not under SBA rules is simply a measure of revenue and employee head count. The SBA definition does not consider the volume or type of the person's hazardous materials activities. If Congress had intended that the SBA's small business criterion be a basis for determining the fee, it would have included appropriate language in Sec. 5108.

The International Sanitary Supply Association (ISSA), which opposes expansion of the base of registrants, stated that RSPA's two-tier fee proposal fails ''to properly consider the criteria that the [law] requires it to do. As such, the imposition of a substantially higher fee without a finding that these companies present greater hazards across the board is inherently inequitable and cannot be supported by the ISSA.'' ISSA stated it would support a risk-based alternative such as charging a higher fee for Table 1 placarded materials than for Table 2 placarded materials, and within each category a higher fee assessed for greater quantities.

Air Products and Chemicals Inc. stated that the lack of standardization in using SBA criteria for small and larger businesses would create confusion and difficulty in enforcement, because ''companies will have difficulty understanding the Standard Industrial Code * * * to recognize whether they meet Small Business Administration criteria for a small business.'' It went on to say, ''We believe that the proposed two-tier fee schedule may cause misunderstanding with current and potential registrants. Also, we doubt whether the Department of Transportation has the time and resources to verify the size criteria for registrants for enforcement.''

Some commenters expressed a preference for basing registration fees on the number or size of containers or vehicles used to transport hazardous materials. The Petroleum Transportation and Storage Association stated that it ''believes that the most efficient and equitable method to structure a multi-tiered fee system based on risk is to assign the fee according to the number of bulk packagings in a HAZMAT shipper's fleet.'' The Illinois Fertilizer and Chemical Association urged RSPA to ''Apply a graduated fee based on size of hazardous material containers,'' suggesting a three-tier level of fees triggered by vehicle gross weight, number of rail cars, or a combination of both.

Farmland Industries, Inc. suggested a three-tier fee as follows:

> (1) Persons who offer for transport or transport a hazardous material only in vehicles weighing less than 26,001 pounds should pay $300.
>
> (2) Persons who offer for transport or transport a hazardous material only in vehicles weighing 26,001 pounds or more should pay $500.
>
> (3) Persons who offer for transport or transport a hazardous material by rail, or by rail and in vehicles weighing 26,001 pounds or more should pay $700.

RSPA has carefully considered the comments submitted in response to the NPRM, and has weighed them against the objectives declared in the April 15, 1999, notice. These objectives required the resulting program to: (1) Be simple,

straightforward, and easily implemented and enforced; (2) Employ an equity factor that reflects the differences between the risk imposed on the public by the business activities of large and small businesses; (3) Ensure the adequacy of funding for the HMEP grants program; and (4) Be consistent with the law. While some of the recommendations made in the comments might come closer to satisfying one of these objectives, RSPA remains convinced that its proposal will most adequately address all four of them.

RSPA does not agree with the commenters opposing the two-tiered fee structure. RSPA considers the proposal to enlarge the definition of those persons required to register and simultaneously to increase the required fee for the larger registrants to be a reasonable distribution of the costs of the program among the varying types and sizes of businesses that contribute to the need for trained emergency response personnel. The expansion of the definition to include all offerors and transporters of placarded shipments of hazardous materials will most directly affect relatively small businesses that use smaller bulk containers or offer to transport or transport placarded shipments of less than 5,000 pounds in non-bulk packages. Requiring these entities to register recognizes that their activities contribute to the need for enhanced emergency response programs. The imposition of a larger fee of $2,000 on persons that do not meet the criteria for a small business, most of whom have been required to register since 1992, places a greater, but not unduly burdensome, share of these costs on companies most likely to be offering to transport or transporting large volumes of hazardous materials.

RSPA spent considerable time and effort evaluating several methods of apportioning the fee among registrants according to various approximations of the risk imposed. We considered factors such as Table 1 and Table 2 materials, the type and size of containers (including vehicles), and the number of shipments offered or transported. We concluded that trying to reasonably distinguish between distinct levels of imposed risk would require the imposition of a complicated system that would necessarily involve significant recordkeeping burdens on the regulated public. Persons interested in a more detailed analysis of such a risk-based proposal may consult Docket HM–208B, RSPA's 1995 proposal to base a four-level fee structure on risk factors.

Further, we are convinced that even the simplest of the suggested alternative fee structures would impose significant cost burdens. For example, the creation of an intermediate fee level for registrants that do not meet the criteria for a small business but engage in limited hazardous materials activities could impose a greater expense on the registrant to maintain the necessary records to prove its level of activity than the cost of the $2,000 fee. Similarly, the suggestion from the Canadian Trucking Alliance that only revenue earned in the United States be used to determine a foreign company's business size (for those businesses for which the SBA size standard is the annual revenue) would involve foreign carriers in complicated and detailed record-keeping.

In response to the commenters who supported retention of a flat fee for all persons required to register, we note that, if the base of registrants is not expanded and the current number of annual registrants is maintained, a flat fee of approximately $555 (including a processing fee of $25) would be necessary to collect $14.3 million in grant monies. If the universe of registrants is expanded to approximately 45,000 persons, a flat fee of $345 (including a $25 processing fee) would be necessary to meet that collection amount. Given Federal directives to consider the needs of small businesses in establishing fees, we cannot justify an increase in the fee required of small businesses when clear alternatives are available.

RSPA also disagrees with commenters who stated that RSPA's proposed use of the SBA criteria: (1) favors big businesses over small businesses; (2) is not one of the determinants allowed by 49 U.S.C. 5108(g)(2)(A); and (3) would be difficult for potential registrants to understand and apply to their business operations. We believe that our goals are best met by establishing a two-tiered fee schedule under which a person not meeting the criterion established for it by the SBA at 13 CFR 121.201 pays a larger fee than that required for a small business. This regulatory approach provides fee levels that reflect a key factor contained in 49 U.S.C. 5108(g)(2)(A), specifically, the relative size of a business.

In addition, this approach generally addresses the different levels of risk posed by small businesses that make fewer and smaller shipments of hazardous materials as compared to larger businesses that annually manufacture, offer, or transport thousands of tons of hazardous materials. Five of the specific factors permitted by 49 U.S.C. 5108 (g)(2)(A) as fee determinants are indicators of the level of risk imposed by the registrants, and two are indicators of the size of the business. Use of the SBA standards for differentiating small businesses offers a simple and direct factor that is commonly used and established by Federal regulation. The use of alternate size criteria would impose additional burdensome, and significant recordkeeping requirements on most registrants.

In relation to the comments suggesting that a limit be placed on the number of registrations required from corporately connected subsidiary companies, RSPA points out that the law requires registration of each ''person'' that engages in certain activities, and that the definition of ''person'' is governed by Section 1 of Title 1 of the U.S. Code. A corporation that elects the option of forming itself into more than one person for whatever reason also assumes certain legal responsibilities for each of those persons, including the requirement to register.

Many commenters believe that use of the SBA size criteria would be confusing to registrants. However, most businesses are already aware of the Standard Industrial Classification (SIC) code applicable to them or can easily determine that code from the list published by the SBA on its Internet web site at the following address: ''http://www.sbaonline.sba.gov/regulations/siccodes/''. This list also contains the size standard established for each SIC code. With few exceptions, the specified standard is either annual receipts (as defined in 13 CFR 121.104) or maximum number of employees (as defined in 13 CFR 121.106). A company that considers the size determinant for its industrial code to be improper can request SBA to reconsider the standard by writing to the Assistant Administrator for Size Standards, Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416. The SBA web site also has a link (''http://www.osha.gov/oshstats/sicser.html'') to the Occupational Safety and Health Administration Standard Industrial Classification search engine for persons needing a fuller description of the definition of the businesses included within particular SIC codes.

For these reasons and based on our review of comments received in response to the NPRM and at the public meetings, we believe that the proposed two-tiered fee schedule based on SBA criteria is the most equitable, simple, and enforceable method for determining and collecting registration fees. Therefore, RSPA is adopting, as proposed, the two-tiered fee schedule

based on SBA criteria for small businesses.

With regard to use of SIC codes, RSPA notes that SBA recently issued a notice of proposed rulemaking (64 FR 57188, October 22, 1999) to amend its size regulations in 13 CFR 121.201 by establishing small business size standards for industries defined under the North American Industry Classification System (NAICS). In addition, SBA proposed that the new size standards be effective for Fiscal Year 2001, which begins October 1, 2000. SBA estimates that relatively few firms would gain or lose small business status as a result of this rule. SBA intends that, in establishing a new table of size standards, firms that are now eligible for Federal small business programs will remain eligible to the maximum extent practicable.

A review of the proposed NAICS table of size standards compared to industries identified by SIC codes in RSPA's regulatory evaluation revealed few instances in which an entity may lose its status as a small business.

The two-tiered fee schedule distributes registration fees according to a well-established measurement of business size and ensures the collection of sufficient funds to support the HMEP grants program at an enhanced level. RSPA will achieve its goal of raising $14.3 million annually (exclusive of funds collected for administrative processing), by collecting a fee of $300 (which includes a $25 processing fee) from an estimated 43,500 registrants that are small businesses and a fee of $2,000 (which includes a $25 processing fee) from an estimated 1,500 registrants that do not meet the criteria for a small business. If the number of estimated new registrants is significantly larger than RSPA's current estimate, RSPA will consider adjusting the registration fees in subsequent years to avoid collecting an annual amount in excess of the $14.3 million required for more appropriate funding of the HMEP grants program.

D. Clarification of ''Offeror'' and ''Shipper''

Some commenters, such as PMAA, Petroleum Transportation and Storage Association (PTSA), AWHMT, and several public meeting speakers, requested that RSPA further clarify and define the terms ''offeror'' and ''shipper.'' These commenters are particularly concerned about a person's name appearing on the shipping paper and containing the information required by §§ 172.202, 172.203, and 172.204. The commenters' concern involves an interpretation [57 FR 48739–41 (October 28, 1992)] by RSPA on activities which the agency considers as indicia of an entity's direct role in causing hazardous materials to be transported in commerce. These commenters include convenience store operators whose names appear on shipping papers when they order bulk quantities of gasoline for resale at their convenience stores. The referenced interpretation (No. 92–1-RSPA) was issued by RSPA's Chief Counsel in response to a request from PMAA and QTI Service Corporation. This interpretation references two previous interpretations (Nos. 88–1–RSPA and 89–1–RSPA) issued by RSPA's Chief Counsel's Office in 1988 and 1989 in response to requests from the National Tank Truck Carriers, Inc., and published in the **Federal Register** on February 26, 1990 (55 FR 6760–62).

PMAA stated that RSPA's instructions and DOT Form F 5800.2 for registration year 1999–2000 contain a definition of ''offeror'' that is in conflict with RSPA's official interpretation. RSPA's instructions state, '' If your company's name appears on the shipping papers as the shipper or as one of the shippers, you have assumed responsibility as an offeror and must therefore register.'' PMAA pointed out that ''Under some state tax laws, the marketer [who orders a shipment of gasoline] is named as the shipper on the shipping papers, since the state requires the marketer's name to be listed since he is the owner of the product.'' PMAA requested RSPA rewrite the registration instructions to clarify that the company's name appearing on the shipping paper as the ''shipper'' does not automatically require registration as an ''offeror.''

PTSA also requested clarification of ''offeror'' and recommended:

> RSPA should clarify the term offeror to include only those functions that relate to the physical control of hazardous material shipments. At the very least, RSPA should allow petroleum marketers who hire common carriers to include their company name on the shipping papers as the billing party without rising to the level of an offeror. This clarification makes sense because the common carrier is the only one in the position to comply with the hazardous material regulations since it has sole control over the physical shipment.

The AWHMT disagrees with PMAA and PTSA and states, ''In our view, if a person's name appears on a shipping paper, the person has engaged in a commercial hazmat transaction and the person is subject to the HMR and if, for purposes of this rulemaking, the shipping paper causes to be transported hazardous materials which are placarded, the person should be'' required to pay a registration fee.

RSPA disagrees with PTSA's position that only those functions normally performed by an offeror that ''relate to the physical control of hazardous materials shipments'' are appropriate in determining whether a person is an offeror of hazardous materials. All of the functions enumerated in Interpretation No. 92–1–RSPA continue to be valid factors for determining whether a person is a ''shipper'' or ''offeror.'' These functions, also printed in the annual registration brochures, include, but are not limited to, selection of the packaging for a regulated hazardous material, physical transfer of hazardous materials to a carrier, determining hazard class, preparing shipping papers, reviewing shipping papers to verify compliance with the HMR or their international equivalents, signing hazardous materials certifications on shipping papers, placing hazardous materials markings or placards on vehicles or packages, and providing placards to a carrier.

RSPA has carefully considered PMAA's request to clarify the advice given in the registration brochure extending the term ''offeror'' to persons whose name appears as the shipper or one of the shippers on the shipping paper. The 1996–97 registration brochure added a statement to the discussion of the term ''offeror'' that if a company's name appears on the shipping papers as the shipper or as one of the shippers, that company has assumed responsibility as an offeror and is therefore required to register. This does not contradict the 1992 interpretation and was intended to clarify the circumstances in which RSPA considers a party to a transaction to be one of the offerors. In the 1992 interpretation and the two related 1988 and 1989 interpretations (published in the **Federal Register** in 1990), RSPA emphasized the principle that more than one person may perform one or more of the functions of an offeror in the course of a transaction. PMAA and other commenters now allege that certain persons who do not engage in any activity of an offeror nevertheless are listed as the shipper or one of the shippers on the shipping papers in compliance with state tax or other regulatory requirements.

RSPA agrees that the act of ordering hazardous materials is not included within the meaning of ''causes to be transported'' and, in and of itself, does not require registration. Beginning in Registration Year 2000–2001, RSPA, as a matter of policy, will no longer consider the presence of a person's name on the shipping paper as the shipper or one of the shippers as

conclusive evidence of whether that person is required to register. The registration brochure will be revised to eliminate that statement. Therefore, a person who purchases a hazardous material, has his or her name on the shipping paper as the shipper, and performs no ''offeror'' functions will not be required to register. However, RSPA notes that, most commonly, a person who is named as a ''shipper'' on a shipping paper performs one or more of the functions of an offeror and is required to register.

Some commenters expressed concern about applicability of the requirement to register to persons who return ''empty'' tank cars to the original shipper or to any other location. Commenters indicated that this requirement may have a significant adverse impact on a number of persons, especially petroleum marketers. According to commenters, many petroleum marketers receive a significant part of their propane supplies by tank car. Commenters argued that payment of the registration fee constitutes a significant cost of doing business and could absorb all of the savings realized by transporting a large volume of propane by tank car.

RSPA has long held that performance of functions necessary to assure the safe return of a tank car or cargo tank motor vehicle containing residue is subject to the HMR and clearly within the meaning of ''offering'' a hazardous material for transportation in commerce. When a propane tank car is unloaded (but not cleaned and purged), the petroleum marketer meets RSPA's criteria for an ''offeror'' when it returns the ''empty'' tank car to a railroad for return to the original shipper or another party. It is not uncommon for an ''empty'' tank car to retain several hundred gallons of product, which in the case of propane is likely to be extremely volatile. RSPA considers this issue to be settled and no comment submitted to the docket concerning this matter causes the agency to reconsider its position.

E. Registration Number Display

The American Trucking Associations (ATA) asked RSPA to remove the requirement for a motor carrier to carry a copy of its current Certificate of Registration issued by RSPA or another document bearing the registration number identified as the ''U.S. DOT Hazmat Reg. No.'' on board each truck and truck tractor as specified in § 107.620 (b). ATA stated:

> Other modes of transportation and shippers are merely required to retain the registration certificate at their principal place of business. This is a more reasonable approach, since the registration certificate does not measure a motor carrier's fitness to transport hazardous materials. It merely identifies who has or has not paid a fee to RSPA. As this is merely a record keeping requirement to prove payment of the fee, a large portion of enforcement should be accomplished during safety and compliance reviews at the motor carrier's place of business instead of at the roadside during a driver/vehicle inspection.

Roadside enforcement is a key element of enforcement of the registration rule. Keeping records only at the motor carriers's place of business instead of in the motor vehicle where they are readily accessible for inspection would adversely impact enforcement efforts by Federal motor carrier inspectors and their partners in the States. A single day of roadside inspections enables inspectors to efficiently verify the registration status of a large number of carriers. Therefore, RSPA is not changing the requirement that a copy of the Certificate of Registration or another document bearing the registration number identified as the ''US DOT Hazmat Reg. No.'' be on board each truck and truck tractor.

F. Constitutionality of Program

PMAA asserts that the registration fee is a ''tax'' and constitutionally deficient. It claims that the registration fee is unconstitutional because the ''originations'' clause in Article I § 7 of the Constitution provides that ''[a]ll bills for raising revenue shall originate in the House of Representatives.'' According to PMAA, the 1990 amendments (as enacted in the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Pub. L. 101–615) ''originated as a bill in the Senate.'' Next, PMAA claims that, because Article I § 8 of the Constitution provides that ''Congress shall have power to lay and collect taxes,'' the authority to set and collect a registration fee has been improperly delegated to DOT. Third, PMAA contends that the registration fee violates the ''equal protection component of the Fifth Amendment due process'' because it is not ''rationally related to a legitimate government objective'' and it ''unfairly discriminates against small transporters.''

The Supreme Court has made it clear that the ''originations'' clause in Article I § 7 applies only to ''a statute that raises revenue to support Government generally.'' *United States* v. *Munoz-Flores,* 495 U.S. 385, 398 (1990). The Court cited its prior decision that ''revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue,'' so that ''a statute that creates a particular governmental program and that raises revenue to support that program'' is not a ''bill for raising revenue'' within the meaning of the originations clause. 495 U.S. at 397, 398. HMTUSA created a specific governmental program, the HMEP grants program, and devised the registration fee to support that specific program. Under the Supreme Court's long-standing interpretation, the registration fee is not subject to the originations clause, and it is unnecessary to undertake the sometimes difficult task of determining the body of Congress in which a particular statutory provision originated. Moreover, cases such as *United States* v. *Sperry Corp.,* 493 U.S. 52, 66 (1989), and *United States* v. *Munoz-Flores,* 863 F.2d 654, 660–61 (9th Cir. 1988), rev'd on other grounds, 495 U.S. 385 (1990), discredit PMAA's theory that the number of the bill enacted into law determines the house in which the specific provision in the bill originated. In these cases, the court analyzed where the specific fee provision actually originated. According to AWHMT, the registration fee was first proposed in a House bill, which the Senate then substituted ''for the Senate bill and returned the bill to the House with a Senate number.''

The Supreme Court has also clarified that a single, straightforward principle governs Congress's power to delegate to an administrative agency the authority to set a fee, regardless of whether the ''fee'' is found to be ''a form of taxation because some of the administrative costs paid by the regulated parties inure to the benefit of the public rather than directly to the benefit of those parties.'' *Skinner* v. *Mid-America Pipeline Co.,* 490 U.S. 212, 223 (1989). Under that principle, delegation is permitted ''so long as Congress provides an administrative agency with standards guiding its actions such that a court could ascertain whether the will of Congress has been obeyed.'' 490 U.S. at 218 (internal quotation marks omitted). Section 5108 contains clear standards, which RSPA has followed in developing this rule, with respect to both the amount of the registration fee and the persons that may be required to register and pay the fee. RSPA notes that § 5108(g)(2) provides that the Secretary may set the amount of the registration fee based on the amount needed to carry out the HMEP grants program. That is exactly the basis on which RSPA has determined the total amount to be raised in registration fees. With the total amount set in this fashion, and the

permissible $250–$5,000 range of the registration fee specified, there are sufficient standards in the law against which to measure RSPA's actions.

As explained in the NPRM, RSPA also believes that the registration fee should be ''fair'' in terms of having ''an equity factor that reflects the differences between the risk imposed on the public by the business activities of large and small businesses,'' and also being ''simple, straightforward, and easily implemented and enforced.'' 64 FR at 18790. RSPA does not read § 5108(g)(2) as requiring a single fee for all registrants nor, however, does it believe that it must provide perfect equity among all persons that are required to register. The Supreme Court has commented that the due process and equal protection clauses do not guarantee perfection in treatment, but rather protect against governmental actions ''that are downright irrational.'' *Hudson* v. *United States,*__U.S.__,118 S.Ct. 488, 495 (1997). The use of registration fees to fund training and planning for emergency response to a hazardous material incident in transportation is clearly a rational governmental action. Congress perceived a nationwide need and fashioned a nationwide program to address that need. The fact that all businesses, including both small and ''large, national transporters,'' pay local taxes that may (or may not) be used by their local communities to train and plan for emergency response to transportation incidents involving hazardous materials is not a constitutional infirmity in a program that uses a national registration fee program to benefit all communities that respond to hazardous materials incidents in transportation. RSPA sees no discrimination against small businesses that pay the minimum fee (under the current program) or (under the program applicable after July 1, 2000) a significantly lower registration fee than a company that is not a small business. As discussed elsewhere (see Section III.C), the dividing line between a small business that will pay a $300 fee and a larger one that will pay a $2,000 fee is based on the size determinations of the Small Business Administration, which, even if not perfect, are appropriate bases for apportioning the costs of funding the HMEP grants program.

G. Statutory Language and Intent

PMAA and others argued that RSPA's proposal departs from the statutory language and intent. PMAA stated that Congress meant to apply the registration fee only to ''large, national hazmat offerors and transporters'' who are directly involved in interstate commerce, and not to an offeror or carrier of ''any placarded load,'' because that criterion is not set forth in § 5108(a)(1). It also contended that the proposed exception for farmers is a political ''call'' which is not authorized in the statute and violates Article I § 8 of the Constitution. The Agricultural Retailers Association (ARA) acknowledged that the statute allows RSPA the discretion to require ''any hazmat carrier'' to register, but it ''believes Congress contemplated this to operate on a carrier-by-carrier basis, and not to operate in an across-the-board fashion.'' ARA urged RSPA to explain Congress's intent in setting the mandatory registration criteria in § 5108(a)(1) and the authority in § 5108(a)(2) for RSPA to require additional persons to register. Senator Conrad Burns (R-MT) expressed concern that the proposed rule contravenes the 1992 technical correction that added the words ''except in a bulk package'' to the mandatory registration provision now codified at § 5108(a)(1)(E), because it will require persons other than farmers who offer or transport nurse tanks with a capacity less than 3,500 gallons to register. PMAA also agreed with other commenters who stated that RSPA should not base the amount of the registration fee on business size instead of the ''eight specific factors'' listed in § 5108(g)(2)(A), and it urged RSPA to wait until congressional reauthorization of the appropriations language in § 5127 before increasing the registration fee.

RSPA believes that § 5108(a)(2) clearly reflects Congress's intent to allow the Secretary to require any person ''transporting or causing to be transported hazardous material in commerce'' to pay the registration fee. As reported by the House Committee on Energy and Commerce in April 1990, H.R. 3520 would have required all offerors and transporters of hazardous materials (among others) to register and allowed the Secretary to ''exempt any class or category of persons from the requirement of this paragraph.'' H.R. Rep. No. 101–444, Part 1, at 80 (Apr. 3, 1990). In contrast, the Senate bill reported in August 1990 contained a provision requiring the Secretary to ''initiate a rulemaking proceeding concerning the need to establish annual or other registration requirements for persons or any class or category of persons who transport, ship, or cause to be transported or shipped in commerce hazardous materials * * *'' S. Rep. No. 101–449 (Aug. 30, 1990), at 1990 U.S.C.C.A.N. 4595, 4623. These two approaches evolved into the provisions in HMTUSA specifying five categories for which registration is mandatory plus the authority for the Secretary to require other persons to register. Congress clearly left to the Secretary's discretion the determination of which additional categories of persons would be required to register and pay a registration fee, including the creation of exceptions from these categories. This conclusion is fully consistent with the direction in § 5103(b)(1) for the Secretary to ''prescribe regulations for the safe transportation of hazardous materials ''in intrastate * * * commerce'' and the broad definition of ''commerce'' in § 5102(l). Accordingly, RSPA has applied the registration requirement to purely intrastate carriers since 1992. See 57 FR 30620, 30622, 30630 (July 9, 1992).

RSPA does not believe that Congress somehow intended the agency to require additional persons to register under § 5108(a)(2) ''on a carrier-by-carrier basis,'' as ARA suggests. Nor does RSPA agree that an exception for farmers from the additional categories of persons to be required to register is irrational, improper, or inconsistent with the will of Congress as expressed in the 1992 technical correction that added the words ''except in bulk packagings'' to current § 5108(a)(1)(E). The technical correction enacted in Public Law 102–508 removed a contradiction between two categories for which registration was mandatory in HMTUSA. As enacted in 1990, one provision of HMTUSA required a person to register if it offers or transports hazardous materials in a bulk packaging, container, or tank that has a capacity of 3,500 gallons or more. However, another provision of HMTUSA required registration by a shipper or carrier of any shipment of at least 5,000 pounds of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required under RSPA's regulations. This meant that a shipper or carrier of hazardous materials (such as anhydrous ammonia) in a nurse tank or other bulk packaging with a 1,000-gallon capacity was covered by the latter provision (because the shipment weighed more than 5,000 pounds) but left out of the former provision. To eliminate this inconsistency, the law was clarified by adding the phrase ''except in a bulk packaging'' to the latter criterion. The 1992 technical change modified the language related to statutorily-mandated registrations and was not related to additional registrations that the Secretary could require by regulation.

Nothing in P.L. 102–508 or its legislative history restricts the Secretary's discretion to require additional persons to register under § 5108(a)(2).

In summary, this regulation is consistent with the Secretary's § 5108(a)(2) authority to require additional persons to register and with the Secretary's § 5108(g)(2) authority to impose an annual fee based on at least one of several criteria. These criteria include several that support this regulation: (1) The type of hazardous material transported or caused to be transported; (2) the amount of such hazardous material; (3) the threat to property, individuals, and the environment from an accident or incident involving such hazardous materials; and (4) other factors the Secretary considers appropriate.

H. FY 2000 Hazardous Materials Program Funding

In the NPRM, RSPA noted that the Administration's Fiscal Year 2000 Budget and Hazardous Materials Transportation Reauthorization proposals to Congress include legislative authority to fund RSPA's entire Hazardous Materials Safety Program from the registration fee program, beginning with the fourth quarter of fiscal year 2000.

Several commenters expressed opposition to RSPA funding the entire Hazardous Materials Safety Program from the registration fee program. The Chemical Manufacturers Association (CMA) stated, ''CMA believes that the Hazardous Materials Safety Program (excluding the registration program) should continue to be funded through general purpose funds; user fees should not be assessed for a program that benefits the general public. CMA also questions whether user fees of that scope could be assessed in a fair and equitable manner. CMA's willingness to support RSPA's proposals in this NPRM does not extend to funding the entire Hazardous Materials Safety Program through the fees collected from the registration program.''

The American Petroleum Institute (API) is also opposed to this proposal to Congress. API stated: ''API does not believe that user fees are the appropriate method to fund the hazardous materials transportation program as its reason for existing is by design, to protect the public against risks to life and property that may result from the transportation of hazardous materials.''

The Association of American Railroads (AAR) expressed its opposition to funding RSPA's Hazardous Materials Safety Program through registration fees, and stated, ''AAR has consistently opposed requiring the regulated community to fund the hazardous materials program. That position extends to using registration fees to pay for RSPA's hazardous materials program.''

The Sulfur Institute expressed its concern about possibly funding RSPA's hazardous materials program from registration fees and believed the proposal needed more clarification to reduce potential confusion.

The proposal to fund RSPA's entire hazardous materials safety program from the registration fee program is unrelated to this rulemaking. The reauthorization proposal is currently pending in Congress, but the FY 2000 budget does not include fourth quarter funding of the entire program through registration fees. If Congress takes action on the reauthorization proposal, RSPA will take appropriate action.

IV. Rulemaking Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget. This final rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the public docket. This final rule is intended to collect annual registration fees in the amount of $14.3 million to support the HMEP grants program. Because Federal hazardous materials transportation law mandates the establishment and collection of fees, the discretionary aspects of this rulemaking are limited to setting the amount of the fees within the statutory range for each person subject to the registration program, and to extending the registration requirements to persons who transport or cause the transportation of hazardous materials but who are not specifically required to register by law. The increased fees are not related to the operational cost of RSPA's hazardous materials safety program. The fees to be paid by shippers and carriers of certain hazardous materials in transportation are related to the benefits received by these persons from the sale and transportation of hazardous materials and from emergency preparedness and response services provided by public sector resources. The fees are also related to expenses incurred by State, Native American tribal, and local governments in carrying out hazardous materials emergency preparedness and response activities.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not adopt any regulation that:

(1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Imposes substantial direct compliance costs on State and local governments; or

(3) Preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. Based on our assessment in the accompanying regulatory evaluation, and the absence of contradictory information submitted to the docket during the public comment period, I certify that the requirements adopted in this final rule are applicable to a substantial number of small businesses, but that the economic impact on these small businesses will not be significant.

Objectives and Legal Basis for the Final Rule

The goal of this rulemaking is to increase annual funding for the national Hazardous Materials Emergency Preparedness (HMEP) grants program from the current level of approximately $6.8 million to $14.3 million. Federal hazardous materials transportation law (49 U.S.C. 5108) directs the Secretary of Transportation to prescribe regulations

for the filing of a registration statement, and payment of an annual fee, by each person transporting or causing to be transported in commerce: (1) A highway-route controlled quantity of Class 7 (radioactive) materials; (2) More than 55 pounds of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container; (3) A package containing more than one liter of a hazardous material designated as extremely toxic by inhalation (Zone A); (4) A hazardous material in a bulk packaging, container, or tank with a capacity equal to or greater than 3,500 gallons for liquids or gases, or more than 468 cubic feet for solids; or (5) A shipment in other than a bulk packaging of 5,000 pounds or more gross weight of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required. In addition, § 5108 permits the Secretary to extend registration requirements to persons who: (1) Transport or cause to be transported hazardous materials in commerce but do not engage in the activities listed above; or (2) Manufacture, fabricate, mark, maintain, recondition, repair, or test packagings that the persons represents, marks, certifies, or sells for use in transporting in commerce hazardous materials. Section 5108 directs the Secretary to impose and collect an annual fee of between $250 and $5,000 from each person required to prepare and file a registration statement. Since 1992, RSPA has chosen to require registration only by those persons under a statutory obligation to do so, and to assess the minimum registration fee of $250 (plus $50 for processing).

Under the current regulations, the approximately 27,000 persons that register and pay the fee of $250 generate annually funds in the amount of $6.8 million. As indicated elsewhere in this preamble, that $6.8 million is inadequate to meet funding levels necessary to carry out critical elements ($7.8 million for training grants, and $5 million for planning grants) of § 5116 of the law at the levels intended by Congress. The means adopted in this final rule for collecting sufficient monies to adequately fund the HMEP grants program is determined to be the best of all evaluated alternatives. This is particularly the case with regard to the potential impact on small businesses.

Identification of Potentially Affected Small Entities

Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of ''small business'' has the same meaning as under the Small Business Act. Since RSPA has established no such special definition, we employ the thresholds established by SBA and codified at 13 CFR 121.201.

Expanded Scope of Registration Rule. As noted in the preamble to this rule and the associated regulatory evaluation, RSPA anticipates an additional 15,000 to 18,000 persons will be required to register each year, with all but 500 of those persons being small businesses. Of this expanded base of registrants, RSPA estimates that potentially as many as 7,000 dealers of refined petroleum products (residential fuel oil, diesel fuel, propane, gasoline, etc.) comprise the single greatest segment of industry engaged in the transportation of hazardous materials that will now be required to prepare and file a registration statement and pay the required fee. Essentially all of these newly affected entities (a substantial number) are thought to meet the applicable SBA criteria for a small business, thereby subjecting them to an annual fee of $300 (including a $25 processing fee).

Based on RSPA's assessment of generally available information, we believe the following is a reasonable generalization of the scope of operations for some of the smaller of small businesses engaged in the distribution of petroleum products. For liquid petroleum products, we considered a theoretical marketer operating three small cargo tank motor vehicles for an average annual delivery to residences of 2 million gallons of distillate number 2 (home heating oil). For liquefied gases, we considered a theoretical marketer operating three small cargo tank motor vehicles for an annual delivery to residences of 400,000 gallons of consumer grade propane.

For the smaller marketer of liquid petroleum products, RSPA notes that over the five-year period between 1994–1998, the national average price per gallon by all sellers of distillate number 2 to residences (excluding tax) ranged from $0.852 to $0.989. (*Source:* Energy Information Administration, *Annual Energy Review, All Sellers Sales Prices for Selected Petroleum Products, 1983–1998*). With sales of 2 million gallons per year, the business would generate annual revenues of at least $1.7 million. Given this scenario, the $300 registration fee represents 0.000176% of sales, which is an amount that should not have a significant impact on the viability of the business. In fact, it is more reasonable to expect that rather than absorbing the $300 fee as overhead, the fuels dealer would pass this cost on to the ultimate consumer. Of 2 million gallons sold, the $300 fee represents an additional cost per gallon of $0.00015, or an increased cost to the consumer of $0.02 on a delivery of 150 gallons of distillate number 2. It is unlikely that a consumer would choose an alternate source of energy on the basis of such a price increase.

For the smaller marketer of liquefied gas products, RSPA notes that over the five-year period between 1994–1998, the national average price per gallon by all sellers of consumer grade propane (excluding tax) ranged from $0.766 to $0.886. (Source: Energy Information Administration, Annual Energy Review, All Sellers Sales Prices for Selected Petroleum Products, 1983–1998). With sales of 400,000 gallons per year, the business would generate annual revenues of at least $306,000. Given this scenario, the $300 registration fee represents 0.001% of sales, an amount that should not have a significant impact on the viability of the business. In fact, it is more reasonable to expect that rather than absorbing the $300 fee as overhead, the propane marketer would pass this cost on to the ultimate consumer. Of 400,000 gallons sold, the $300 fee represents an additional cost per gallon of $0.00075, or an increased cost to the consumer of $0.11 on a delivery of 150 gallons of propane. It is unlikely that a consumer would choose an alternate source of energy on the basis of such a price increase.

Alternate Requirements for Small Businesses

The Regulatory Flexibility Act suggests that it may be possible to establish exceptions and differing compliance standards for small business and still meet the objectives of the applicable regulatory statutes. RSPA believes it has met that goal through the adoption of a two-tier fee schedule in which a small business must pay an annual fee of $300 (including a $25 processing fee) while persons that do not meet SBA criteria for a small business must pay an annual fee of $2,000 (including a $25 processing fee).

Conclusion

For small businesses, the cost of compliance with the requirement adopted in this final rule is so little that RSPA is confident that it will not have a significant impact on their ability to continue to successfully conduct operations related to the transportation of placarded shipments of hazardous materials. Based on its analysis, RSPA determined that although the requirement adopted in this final rule applies to a substantial number of small businesses, its economic burden is not

significant, even for the smaller of the universe of affected small businesses.

E. Unfunded Mandates Reform Act of 1995

This final rule will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves the objectives of the rule.

F. Paperwork Reduction Act

Under 49 U.S.C. 5108(i), reporting and recordkeeping requirements pertaining to the registration rule are specifically excepted from the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Impact on Business Processes and Computer Systems

We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to ''Y2K'' or related computer problems. This final rule does not mandate business process changes or require modifications to computer systems. Because this rule does not affect organizations' ability to respond to those problems, we are not delaying the effectiveness of the requirements.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and record keeping requirements.

In consideration of the foregoing, 49 CFR part 107 is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

Subpart G—Registration of Persons Who Offer or Transport Hazardous Materials

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Sec 212–213, Pub.L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53

2. Section 107.601 is revised to read as follows:

§ 107.601 Applicability.

(a) The registration and fee requirements of this subpart apply to any person who offers for transportation, or transports, in foreign, interstate or intrastate commerce—

(1) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this chapter;

(2) More than 25 kg (55 pounds) of a Division 1.1,1.2.or 1.3 (explosive) material (see § 173.50 of this chapter) in a motor vehicle, rail car or freight container;

(3) More than one L (1.06 quarts) per package of a material extremely toxic by inhalation (*i.e.*, ''material poisonous by inhalation,'' as defined in § 171.8 of this chapter, that meets the criteria for ''hazard zone A,'' as specified in §§ 173.116(a) or 173.133(a) of this chapter);

(4) A shipment of a quantity of hazardous materials in a bulk packaging (see § 171.8 of this chapter) having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids;

(5) A shipment in other than a bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class, under the provisions of subpart F of part 172 of this chapter; or

(6) Except as provided in paragraph (b) of this section, a quantity of hazardous material that requires placarding, under provisions of subpart F of part 172 of this chapter.

(b) Paragraph (a)(6) of this section does not apply to those activities of a farmer, as defined in § 171.8 of this chapter, that are in direct support of the farmer's farming operations.

(c) In this subpart, the term ''shipment'' means the offering or loading of hazardous material at one loading facility using one transport vehicle, or the transport of that transport vehicle.

3. In § 107.608, paragraphs (a), (b), and (d) are revised to read as follows:

§ 107.608 General registration requirements.

(a) Except as provided in § 107.616(d), each person subject to this subpart must submit a complete and accurate registration statement on DOT Form F 5800.2 not later than June 30 for each registration year, or in time to comply with paragraph (b) of this section, whichever is later. Each registration year begins on July 1 and ends on June 30 of the following year.

(b) No person required to file a registration statement may transport a hazardous material or cause a hazardous material to be transported or shipped, unless such person has on file, in accordance with § 107.620, a current Certificate of Registration in accordance with the requirements of this subpart.

* * * * *

(d) Copies of DOT Form F 5800.2 and instructions for its completion may be obtained from the Hazardous Materials Registration Program, DHM–60, U.S. Department of Transportation, Washington, DC 20590–0001, by calling 617–494–2545 or 202–366–4109, or via the Internet at ''http://hazmat.dot.gov''.

* * * * *

4. Section 107.612 is revised to read as follows:

§ 107.612 Amount of fee.

(a) *Registration year 1999–2000 and earlier.* For all registration years through 1999–2000, each person subject to the requirements of § 107.601(a)(1)–(5) of this subpart must pay an annual fee of $300 (which includes a $50 processing fee).

(b) *Registration year 2000–2001 and following.* For each registration year beginning with 2000–2001, each person subject to the requirements of this subpart must pay an annual fee as follows:

(1) *Small business.* Each person that qualifies as a small business under criteria specified in 13 CFR part 121 applicable to the standard industrial classification (SIC) code that describes that person's primary commercial activity must pay an annual fee of $275 and the processing fee required by paragraph (b)(3) of this section.

(2) *Other than a small business.* Each person that does not meet criteria specified in paragraph (b)(1) of this section must pay an annual fee of $1,975 and the processing fee required by paragraph (b)(3) of this section.

(3) *Processing fee.* The processing fee is $25 for each registration statement filed. A single statement may be filed for

one, two, or three registration years as provided in § 107.616(c).

5. In § 107.616, paragraphs (c) and (d)(2) are revised to read as follows:

§ 107.616 Payment procedures.

* * * * *

(c) Payment must correspond to the total fees properly calculated in the ''Amount Due'' block of the DOT form F 5800.2. A person may elect to register and pay the required fees for up to three registration years by filing one complete and accurate registration statement.

(d) * * *

(2) Pay a registration and processing fee of $350 (including a $50 expedited handling fee). For registration years 2000–2001 and following, persons who do not meet the criteria for a small business, as specified in § 107.612(b)(1), must enclose an additional payment of $1,700 with the expedited follow-up material, for a total of $2,050 (including a $50 expedited handling fee); and

* * * * *

Issued in Washington, D.C. on February 8, 2000, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Administrator.

[FR Doc. 00–3300 Filed 2–11–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. RSPA–2000–6744 (HM–145L)]

RIN 2137–AD39

Hazardous Materials: Hazardous Substances—Revisions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, RSPA is amending the Hazardous Materials Regulations (HMR) by revising the ''List of Hazardous Substances and Reportable Quantities'' that appears in Appendix A, ''Hazardous Substances other than Radionuclides,'' to the Hazardous Materials Table. This action is necessary to comply with the Superfund Amendments and Reauthorization Act (SARA) of 1986, which amended the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) to mandate that RSPA regulate, under the HMR, all hazardous substances designated by the Environmental Protection Agency (EPA). The intended effect of this action is to enable shippers and carriers to identify CERCLA hazardous substances, thereby enabling them to comply with all applicable HMR requirements and to make the required notifications if a discharge of a hazardous substance occurs. No notice of proposed rulemaking (NPRM) has preceded this final rule because, in light of RSPA's lack of discretion concerning the regulation of hazardous substances under the HMR, RSPA finds that under the Administrative Procedure Act notice would serve no purpose and thus is unnecessary.

DATES: This amendment is effective on August 14, 2000. However, immediate compliance with the regulations as amended herein is authorized.

FOR FURTHER INFORMATION CONTACT: Michael Johnsen (202) 366–8553, Office of Hazardous Materials Standards, RSPA, 400 7th Street, SW, Washington, DC 20590. Questions about hazardous substance designations or reportable quantities should be directed to the Environmental Protection Agency (EPA) at the RCRA/Superfund hotline at (800) 424–9346 or, in Washington, DC, (202) 382–3000.

SUPPLEMENTARY INFORMATION:

I. Background

Section 202 of SARA (Pub. L. 99–499) amended Section 306(a) of CERCLA (Pub. L. 96–510), 42 U.S.C. 9656(a), by requiring the Secretary of Transportation to list and regulate hazardous substances, listed or designated under Section 101(14) of CERCLA, 42 U.S.C. 9601(14), as hazardous materials under the Federal hazardous materials transportation law (49 U.S.C. 5101–5127). RSPA carries out the rulemaking responsibilities of the Secretary of Transportation under the Federal hazardous materials transportation law, 49 CFR 1.53(b). This final rule is necessary to comply with 42 U.S.C. 9656(a) as amended by section 202 of SARA.

In carrying out that statutory mandate, RSPA has no discretion to determine what is or is not a hazardous substance or the appropriate reportable quantity (RQ) for materials designated as hazardous substances. This authority is vested in EPA. Therefore, under the CERCLA scheme, EPA must issue final rules amending the list of CERCLA hazardous substances, including adjusting RQs, before RSPA can amend its list of hazardous substances. In the preamble to a final rule on this subject issued under Docket HM–145F (51 FR 42174; November 21, 1986), RSPA included the following statement:

> It is RSPA's intention to make changes from time to time to the list of hazardous substances or their RQ's in the Appendix as adjustments are made by EPA.

This rulemaking adjusts the ''List of Hazardous Substances and Reportable Quantities'' that appears in Appendix A to § 172.101, based on the following final rules that were published by EPA in the **Federal Register** and added and removed entries to the EPA table in 40 CFR 302.4 List of Hazardous Substances and Reportable Quantities under CERCLA:

June 17, 1997 (62 FR 32974) rule added three new waste codes (K156, K157, K158) from the industrial production of carbamate chemicals;

May 4, 1998 (63 FR 24596) rule added 2,4,6-Tribromophenol and an associated waste code (K140);

August 6, 1998 (63 FR 42110) rule added four waste codes from petroleum refining (K169, K170, K171, K172); and

December 15, 1998 (63 FR 69116) rule removed caprolactam.

This rulemaking will enable shippers and carriers to identify CERCLA hazardous substances and thereby enable them to comply with all applicable HMR requirements and to make the required notifications if a discharge of a hazardous substance occurs. In addition to the reporting requirements of the HMR found in §§ 171.15 and 171.16, a discharge of a hazardous substance is subject to EPA reporting requirements at 40 CFR 302.6 and may be subject to the reporting requirements of the U.S. Coast Guard at 33 CFR 153.203.

II. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does preempt State, local, and Indian tribe requirements but does not adopt any regulation that has substantial

direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

This final rule addresses designation of hazardous material and preempts state, local, or Indian tribe requirements not meeting the ''substantively the same'' standard. This rule is required by law. Federal hazardous materials transportation law provides at section 5125(b)(2) that if RSPA issues a regulation concerning any of the covered subjects, RSPA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption for these requirements is May 15, 2000.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review most regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. Because this rule was not preceded by an NPRM, however, the Regulatory Flexibility Act does not apply to it and no assessment is required. EPA addressed the Regulatory Flexibility Act when it made the hazardous substances designations and changes reflected in this rule.

E. Paperwork Reduction Act

This final rule does not impose any new information collection burdens.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule imposes no mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

H. Impact on Business Processes and Computer Systems

We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to ''Y2K'' or related computer problems. This final rule does not mandate business process changes or require modifications to computer systems. Because this rule does not affect organizations' ability to respond to those problems, we are not delaying the effectiveness of the requirements.

List of Subjects in 49 CFR Part 172

Hazardous materials transportation, Hazardous wastes, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, part 172 of Title 49, Code of Federal Regulations, is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In Appendix A to § 172.101, Table 1 is amended by removing and adding, in listed order, the following entries to read as follows:

Appendix A to § 172.101—List of Hazardous Substances and Reportable Quantities

* * * * *

TABLE 1 TO APPENDIX A—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
[REMOVE]	
* * * * *	
Caprolactam	5000
* * * * *	
[ADD]	
* * * * *	
2,4,6-Tribromophenol	100
K140	100
K156	1
K157	1
K158	1
K169	10
K170	1
K171	1
K172	1
* * * * *	

Issued in Washington, DC on February 3, 2000 under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Administrator, Research and Special Programs Administration.

[FR Doc. 00–3379 Filed 2–11–00; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 65, No. 30
Monday, February 14, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1735

RIN 2550–AA08

Implementation of the Equal Access to Justice Act

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Proposed regulation.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is proposing a regulation that would implement the Equal Access to Justice Act (Act). The Act provides for the award of fees and other expenses to eligible individuals and entities that are parties to adversary adjudications before the Federal government. The proposed regulation would establish procedures for the filing and consideration of applications for awards of fees and expenses in connection with adversary adjudications before OFHEO.

DATES: Written comments on the proposed regulation must be received by April 14, 2000.

ADDRESSES: Send written comments concerning the proposed regulation to Anne E. Dewey, General Counsel, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. Written comments may also be sent to Ms. Dewey by electronic mail at RegComments@OFHEO.gov.

FOR FURTHER INFORMATION CONTACT: Isabella W. Sammons, Associate General Counsel, telephone (202) 414–3790, (not a toll-free number), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Equal Access to Justice Act (Act), 5 U.S.C. 504, provides that eligible individuals and entities that are parties to adversary adjudications before Federal agencies may file an application for an award of fees and other expenses. Eligible parties may receive an award for fees and other expenses incurred by them in connection with an adversary adjudication before the Office of Federal Housing Enterprise Oversight (OFHEO) if they prevail over OFHEO, unless the position of OFHEO in the adversary adjudication was substantially justified. Eligible parties may also receive an award for fees and other expenses incurred by them in defending against a demand by OFHEO if the demand of OFHEO was substantially in excess of the decision in the adversary adjudication and was unreasonable when compared with such decision.

The Act requires that OFHEO and other Federal agencies establish procedures for the filing and consideration of applications for an award of fees and other expenses. Subpart A of the proposed regulation sets forth definitions, eligibility requirements, standards for awards, and allowable fees and expenses. Subpart B describes the information that must be included in an application for award and Subpart C provides the procedures for filing and consideration of an application for award.

The provisions of the proposed regulation reflect the 1996 amendments to the Act that were enacted pursuant to Pub. L. 104–121, 110 Stat. 862 (1996). Furthermore, to the extent appropriate, the provisions of the proposed regulation are substantially similar to the provisions of the Model Rules for Implementation of the Equal Access to Justice Act in Agency Proceedings, 1 CFR part 315 (1986) (51 FR 16659—16669 (May 6, 1986)).

Comments

OFHEO requests comment from the public and will take all comments into consideration before issuing the final regulation. Copies of all comments received will be available for examination by the public at the Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The proposed regulation is not classified as a significant rule under Executive Order 12866 because it will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this proposed regulation has not been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the proposed regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the proposed regulation, if adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the number of applications for awards by small entities is expected to be extremely small.

Paperwork Reduction Act

The proposed regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act of 1995

The proposed regulation does not require the preparation of an assessment statement in accordance with the

Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. Assessment statements are not required for regulations that incorporate requirements specifically set forth in law. As explained in the preamble, the proposed regulation implements specific statutory requirements. In addition, the proposed regulation does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

List of Subjects in 12 CFR Part 1735

Administrative practice and procedure, Equal access to justice.

For the reasons stated in the preamble, OFHEO proposes to add part 1735 to chapter XVII of title 12 of the Code of Federal Regulations as follows:

PART 1735—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

Subpart A—General Provisions

Sec.
1735.1 Purpose and scope.
1735.2 Definitions.
1735.3 Eligible parties.
1735.4 Standards for awards.
1735.5 Allowable fees and expenses.
1735.6 Rulemaking on maximum rate for fees.
1735.7 Awards against other agencies.
1735.8–9 [Reserved]

Subpart B—Information Required from Applicants

1735.10 Contents of the application for award.
1735.11 Request for confidentiality of net worth exhibit.
1735.12 Documentation of fees and expenses.
1735.13—1735.19 [Reserved]

Subpart C—Procedures for Filing and Consideration of the Application for Award

1735.20 Filing and service of the application for award and related papers.
1735.21 Answer to the application for award.
1735.22 Reply to the answer.
1735.23 Comments by other parties.
1735.24 Settlement.
1735.25 Further proceedings on the application for award.
1735.26 Decision of the adjudicative officer.
1735.27 Review by OFHEO.
1735.28 Judicial review.
1735.29 Payment of award.

Authority: 5 U.S.C. 504(c)(1).

Subpart A—General Provisions

§ 1735.1 Purpose and scope.

(a) This part implements the Equal Access to Justice Act, 5 U.S.C. 504, by establishing procedures for the filing and consideration of applications for award of fees and other expenses to eligible individuals and entities who are parties to adversary adjudications before OFHEO.

(b) This part applies to the award of fees and other expenses in connection with adversary adjudications before OFHEO; However, if a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses may not be made only pursuant to 28 U.S.C. 2412(d)(3).

§ 1735.2 Definitions.

(a) *Adjudicative officer* means the official who presided at the underlying adversary adjudication, without regard to whether the official is designated as a hearing examiner, administrative law judge, administrative judge, or otherwise.

(b) *Adversary adjudication* means an administrative proceeding conducted by OFHEO under 5 U.S.C. 554 in which the position of OFHEO or any other agency of the United States is represented by counsel or otherwise, including but not limited to an adjudication conducted under 12 CFR part 1780. Any issue as to whether an administrative proceeding is an adversary adjudication for purposes of this part will be an issue for resolution in the proceeding on the application for award.

(c) *Affiliate* means an individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the party, or any corporation or other entity of which the party directly or indirectly owns or controls a majority of the voting shares or other interest, unless the adjudicative officer determines that it would be unjust and contrary to the purpose of the Equal Access to Justice Act in light of the actual relationship between the affiliated entities to consider them to be affiliates for purposes of this part.

(d) *Agency counsel* means the attorney or attorneys designated by the General Counsel of OFHEO to represent OFHEO in an adversary adjudication covered by this part.

(e) *Demand of OFHEO* means the express demand of OFHEO that led to the adversary adjudication, but does not include a recitation by OFHEO of the maximum statutory penalty when accompanied by an express demand for a lesser amount.

(f) *Fees and other expenses* include reasonable attorney or agent fees, the reasonable expenses of expert witnesses, and the reasonable cost of any study, analysis, engineering report, test, or project that is found by the agency to be necessary for the preparation of the eligible party's case.

(g) *Final disposition* means the date on which a decision or order disposing of the merits of the adversary adjudication or any other complete resolution of the adversary adjudication, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the agency and to the courts.

(h) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

(i) *Party* means an individual, partnership, corporation, association, or public or private organization that is named or admitted as a party, that is admitted as a party for limited purposes, or that is properly seeking and entitled as of right to be admitted as a party in an adversary adjudication.

(j) *Position of OFHEO* means the position taken by OFHEO in the adversary adjudication, including the action or failure to act by OFHEO upon which the adversary adjudication was based.

§ 1735.3 Eligible parties.

(a) To be eligible for an award an award of fees and other expenses under § 1735.4(a), a party must be a small entity as defined in 5 U.S.C. 601.

(b)(1) To be eligible for an award of fees and other expenses for prevailing parties under § 1735.5(b), a party must be one of the following:

(i) An individual who has a net worth of not more than $2 million;

(ii) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interest, and not more than 500 employees; however, a party who owns an unincorporated business will be considered to be an ''individual'' rather than the ''sole owner of an unincorporated business'' if the issues on which the party prevails are related primarily to personal interests rather than to business interests.

(iii) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), with not more than 500 employees;

(iv) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a), with not more than 500 employees; or

(v) Any other partnership, corporation, association, unit of local government, or organization that has a net worth of not more than $7 million and not more than 500 employees.

(2) For purposes of eligibility under paragraph (b) of this section:

(i) The employees of a party include all persons who regularly perform services for remuneration for the party, under the party's direction and control. Part-time employees shall be included on a proportional basis.

(ii) The net worth and number of employees of the party and its affiliates shall be aggregated to determine eligibility.

(iii) The net worth and number of employees of a party shall be determined as of the date the underlying adversary adjudication was initiated.

(c) A party that participates in an adversary adjudication primarily on behalf of one or more entities that would be ineligible for an award is not itself eligible for an award.

§ 1735.4 Standards for awards.

(a) An eligible party that files an application for award of fees and other expenses in accordance with this part shall receive an award of fees and other expenses related to defending against a demand of OFHEO if the demand was in excess of the decision in the underlying adversary adjudication and was unreasonable when compared with the decision under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or unless special circumstances make an award unjust. The burden of proof that the demand of OFHEO was substantially in excess of the decision and is unreasonable when compared with the decision is on the eligible party. An award under this paragraph shall be paid only as a consequence of appropriations paid in advance.

(b) An eligible party that submits an application for award in accordance with this part shall receive an award of fees and other expenses incurred in connection with an adversary adjudication or in a significant and discrete substantive portion of the adversary adjudication in which it prevailed, unless the position of OFHEO in the adversary adjudication was substantially justified or special circumstances make an award unjust. OFHEO has the burden of proof to show that its position was substantially justified and may do so by showing that its position was reasonable in law and in fact.

§ 1735.5 Allowable fees and expenses.

(a) Awards of fees and other expenses shall be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the party. However, except as provided in § 1735.6, an award for the fee of an attorney or agent may not exceed $125 per hour and an award to compensate an expert witness may not exceed the highest rate at which OFHEO pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or expert witness as a separate item if he or she ordinarily charges clients separately for such expenses.

(b) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fees for similar services; or, if the attorney, agent, or expert witness is an employee of the eligible party, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the eligible party;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudication; and

(5) Such other factors as may bear on the value of the services provided.

(c) In determining the reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of a party, the adjudicative officer shall consider the prevailing rate for similar services in the community in which the services were performed.

(d) Fees and other expenses incurred before the date on which an adversary adjudication was initiated will be awarded only if the eligible party can demonstrate that they were reasonably incurred in preparation for the adversary adjudication.

§ 1735.6 Rulemaking on maximum rate for fees.

If warranted by an increase in the cost of living or by special circumstances, OFHEO may adopt regulations providing for an award of attorney or agent fees at a rate higher than $125 per hour in adversary adjudications covered by this part. Special circumstances include the limited availability of attorneys or agents who are qualified to handle certain types of adversary adjudications. OFHEO will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedures Act, 5 U.S.C. 553.

§ 1735.7 Awards against other agencies.

If another agency of the United States participates in an adversary adjudication before OFHEO and takes a position that was not substantially justified, the award or appropriate portion of the award to an eligible party that prevailed over that agency shall be made against that agency.

§§ 1735.8—1735.9 [Reserved]

Subpart B—Information Required from Applicants

§ 1735.10 Contents of the application for award.

(a) An application for award of fees and other expenses under either § 1735.4(a) and § 1735.4(b) shall:

(1) Identify the applicant and the adversary adjudication for which an award is sought;

(2) State the amount of fees and other expenses for which an award is sought;

(3) Provide the statements and documentation required by paragraph (b) or (c) of this section and § 1735.12 and any additional information required by the adjudicative officer; and

(4) Be signed by the applicant or an authorized officer or attorney of the applicant and contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(b) An application for award under § 1735.4(a) shall show that the demand of OFHEO was substantially in excess of, and was unreasonable when compared to, the decision in the underlying adversary adjudication under the facts and circumstances of the case. It shall also show that the applicant is a small entity as defined in 5 U.S.C. 601.

(c) An application for award under § 1735.4(b) shall:

(1) Show that the applicant has prevailed in a significant and discrete substantive portion of the underlying adversary adjudication and identify the position of OFHEO in the adversary adjudication that the applicant alleges was not substantially justified;

(2) State the number of employees of the applicant and describe briefly the type and purposes of its organization or business (if the applicant is not an individual);

(3) State that the net worth of the applicant does not exceed $2 million, if the applicant is an individual; or for all other applicants, state that the net worth of the applicant and its affiliates, if any, does not exceed $7 million; and

(4) Include one of the following:

(i) A detailed exhibit showing the net worth (net worth exhibit) of the

applicant and its affiliates, if any, when the underlying adversary adjudication was initiated. The net worth exhibit may be in any form convenient to the applicant as long as the net worth exhibit provides full disclosure of the assets and liabilities of the applicant and its affiliates, if any, and is sufficient to determine whether the applicant qualifies as an eligible party;

(ii) A copy of a ruling by the Internal Revenue Service that shows that the applicant qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3); or in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the belief that the applicant qualifies under such section; or

(iii) A statement that the applicant is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a).

§ 1735.11 Request for confidentiality of net worth exhibit.

(a) The net worth exhibit described in § 1735.10(c)(4)(i) shall be included in the public record of the proceeding for the award of fees and other expenses, except if confidential treatment is requested and granted as provided in paragraph (b) of this section.

(b)(1) The applicant may request confidential treatment of the information in the net worth exhibit by filing a motion directly with the adjudicative officer in a sealed envelope labeled ''Confidential Financial Information.'' If the adjudicative officer finds that the information should be withheld from public disclosure, any request to inspect or copy the information by another party or the public shall be resolved in accordance with the Freedom of Information Act, 5 U.S.C. 552b, and the Releasing Information regulation at 12 CFR part 1710.

(2) The motion shall:

(i) Include a copy of the portion of the net worth exhibit sought to be withheld;

(ii) Describe the information sought to be withheld; and

(iii) Explain why the information is exempt from disclosure under the Freedom of Information Act and why public disclosure of the information would adversely affect the applicant and is not in the public's interest.

(iv) Be served on agency counsel but need not be served on any other party to the proceeding.

§ 1735.12 Documentation of fees and expenses.

(a) The application for award shall be accompanied by full and itemized documentation of the fees and other expenses for which an award is sought. The adjudicative officer may require the applicant to provide vouchers, receipts, logs, or other documentation for any fees or expenses claimed.

(b) A separate itemized statement shall be submitted for each entity or individual whose services are covered by the application. Each itemized statement shall include:

(1) The hours spent by each entity or individual;

(2) A description of the specific services performed and the rates at which each fee has been computed; and

(3) Any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity.

§§ 1735.13—1735.19 [Reserved]

Subpart C—Procedures for Filing and Consideration of the Application for Award

§ 1735.20 Filing and service of the application for award and related papers.

(a) An application for an award of fees and other expenses must be filed no later than 30 days after the final disposition of the underlying adversary adjudication.

(b) An application for award and other papers related to the proceedings on the application for award shall be filed and served on all parties in the same manner as papers are filed and served in the underlying adversary adjudication, except as otherwise provided in this part.

(c) The computation of time for filing and service of the application of award and other papers shall be computed in the same manner as in the underlying adversary adjudication.

§ 1735.21 Answer to application for award.

(a) Agency counsel shall file an answer within 30 days after service of an application for award of fees and other expenses except as provided in paragraphs (b) and (c) of this section. In the answer, agency counsel shall explain any objections to the award requested and identify the facts relied upon to support the objections. If any of the alleged facts are not already in the record of the underlying adversary adjudication, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1735.25.

(b) If agency counsel and the applicant believe that the issues in the application for award can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days. Upon request by agency counsel and the applicant, the adjudicative officer may grant for good cause further time extensions.

(c) Agency counsel may request that the adjudicative officer extend the time period for filing an answer. If agency counsel does not answer or otherwise does not contest or settle the application for award within the 30-day period or the extended time period, the adjudicative officer may make an award of fees and other expenses upon a satisfactory showing of entitlement by the applicant.

§ 1735.22 Reply to the answer.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the underlying adversary adjudication, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1735.25.

§ 1735.23 Comments by other parties.

Any party to the underlying adversary adjudication other than the applicant and agency counsel may file comments on an application for award within 30 calendar days after it is served, or on an answer within 15 calendar days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1735.24 Settlement.

The applicant and agency counsel may agree on a proposed settlement of an award before the final decision on the application for award is made, either in connection with a settlement of the underlying adversary adjudication or after the underlying adversary adjudication has been concluded. If the eligible party and agency counsel agree on a proposed settlement of an award before an application for award has been filed, the application shall be filed with the proposed settlement.

§ 1735.25 Further proceedings on the application for award.

(a) On request of either the applicant or agency counsel, on the adjudicative officer's own initiative, or as requested by the Director of OFHEO under § 1735.27, the adjudicative officer may

order further proceedings, such as an informal conference, oral argument, additional written submissions, or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidential hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application for award and shall be conducted as promptly as possible. The issue as to whether the position of OFHEO in the underlying adversary adjudication was substantially justified shall be determined on the basis of the whole administrative record that was made in the underlying adversary adjudication.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought on the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 1735.26 Decision of the adjudicative officer.

(a) The adjudicative officer shall make the initial decision on the basis of the written record, except if further proceedings are ordered under § 1735.25.

(b) The adjudicative officer shall issue a written initial decision on the application for award within 30 days after completion of proceedings on the application. The initial decision shall become the final decision of OFHEO after 30 days from the day it was issued, unless review is ordered under § 1735.27.

(c) In all initial decisions, the adjudicative officer shall include findings and conclusions with respect to the applicant's eligibility and an explanation of the reasons for any difference between the amount requested by the applicant and the amount awarded. If the applicant has sought an award against more than one agency, the adjudicative officer shall also include findings and conclusions with respect to the allocation of payment of any award made.

(d) In initial decisions on applications filed pursuant to § 1735.4(a), the adjudicative officer shall include findings and conclusions as to whether OFHEO made a demand that was substantially in excess of the decision in the underlying adversary adjudication and that was unreasonable when compared with that decision; and, if at issue, whether the applicant has committed a willful violation of the law or otherwise acted in bad faith, or whether special circumstances would make the award unjust.

(e) In decisions on applications filed pursuant to § 1735.4(b), the adjudicative officer shall include written findings and conclusions as to whether the applicant is a prevailing party and whether the position of OFHEO was substantially justified; and, if at issue, whether the applicant unduly protracted or delayed the underlying adversary adjudication or whether special circumstance make the award unjust.

§ 1735.27 Review by OFHEO.

Within 30 days after the adjudicative officer issues an initial decision under § 1735.26, either the applicant or agency counsel may request the Director of OFHEO to review the initial decision of the adjudicative officer. The Director of OFHEO or his or her designee may also decide, on his or her own initiative, to review the initial decision. Whether to review a decision is at the discretion of the Director of OFHEO or his or her designee. If review is ordered, the Director of OFHEO or his or her designee shall issue a final decision on the application for award or remand the application for award to the adjudicative officer for further proceedings under § 1735.25.

§ 1735.28 Judicial review.

Any party, other than the United States, that is dissatisfied with the final decision on an application for award of fees and expenses under this part may seek judicial review as provided in 5 U.S.C. 504(c)(2).

§ 1735.29 Payment of award.

To receive payment of an award of fees and other expenses granted under this part, the applicant shall submit a copy of the final decision that grants the award and a certification that the applicant will not seek review of the decision in the United States courts to the Director, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Washington, DC 20552. OFHEO shall pay the amount awarded to the applicant within 60 days of receipt of the submission of the copy of the final decision and the certification, unless judicial review of the award has been sought any party to the proceedings.

Dated: February 7, 2000.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 00–3242 Filed 2–11–00; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–251–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A300, A300–600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A300–600, and A310 series airplanes, that currently requires inspections to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, and repair, if necessary. For certain Model A310 series airplanes, this action would reduce the currently required inspection thresholds and intervals, and would remove an option for a terminating modification. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the engine pylon's lower spar, and possible separation of the engine from the airplane.

DATES: Comments must be received by March 15, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–251–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–251–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–251–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 15, 1996, the FAA issued AD 96–11–05, amendment 39–9630 (61 FR 26091, May 24, 1996), applicable to certain Airbus Industrie Model A300, A300–600, and A310 series airplanes, to require inspections to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, and repair, if necessary. That action was prompted by a report that fatigue cracks were found in the lower spar of the pylon between ribs 6 and 7 on airplanes equipped with General Electric and Pratt and Whitney engines. These cracks initiated at the pylon center stiffener beyond the flat area. The requirements of that AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the lower spar of the pylon.

Actions Since Issuance of Previous Rule

Since the issuance of AD 96–11–05, the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has advised the FAA that certain in-service events have necessitated a revised inspection program for Airbus Model A310 series airplanes. The DGAC informed the FAA that, as a result of these in-service events, accomplishment of Airbus Service Bulletin A310–54–2023, dated October 15, 1993, is no longer appropriate terminating action for the inspection requirements of AD 96–11–05 for affected Model A310 series airplanes. (That service bulletin is cited in AD 96–11–05 as the appropriate source of service information for accomplishment of the modification that terminates the requirement for the internal eddy current inspections for those Model A310 series airplanes.) However, compliance with that service bulletin would extend the inspection thresholds and repetitive intervals for Model A310 series airplanes.

Explanation of Relevant Service Information

Airbus Industrie has issued Service Bulletin A310–54–2017, Revision 03, dated June 11, 1999, which describes procedures for repetitive eddy current inspections of the engine pylon lower spar for cracks, and repair of any crack. For Model A310 series airplanes, Revision 03 reduces the recommended compliance times and repetitive inspection intervals. Revision 03 also specifies additional inspection thresholds and intervals for Model A310 series airplanes on which modification of the lower ribs and spar between ribs 6 and 7 has been accomplished as specified in Airbus Service Bulletin A310–54–2023, dated October 15, 1993. The DGAC classified Service Bulletin A310–54–2017, Revision 03, as mandatory and issued French airworthiness directive 1999–239–287(B), dated June 2, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 96–11–05 to continue to require inspections to detect cracks in the lower spar axis of the engine pylons for Airbus Model A300 and A300–600 series airplanes, and to require accomplishment of the actions specified in Airbus Service Bulletin A310–54–2017, Revision 03, for Model A310 series airplanes.

Cost Impact

There are approximately 146 airplanes of U.S. registry that would be affected by this proposed AD.

The requirements of this proposed AD would not add any new additional economic burden on affected operators, other than the costs that are associated with accomplishing inspections for certain airplanes at an earlier time than would have been required by AD 96–11–05. The current costs associated with this AD are reiterated (as follows) for the convenience of affected operators.

The inspections that are currently required by AD 96–11–05, and retained in this AD, take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $480 per airplane, per inspection cycle.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9630 (61 FR 26091, May 24, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 99–NM–251–AD. Supersedes AD 96–11–05, Amendment 39–9630.

Applicability: The following models, certificated in any category:

- Model A300 and A300–600 series airplanes, as listed in Airbus Service Bulletins A300–54–0073 and A300–54–6014, both Revision 1, dated March 28, 1994; and
- Model A310 series airplanes, except those on which Airbus Modification 10149 has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (m)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking, which could result in reduced structural integrity of the engine pylon's lower spar and possible separation of the engine from the airplane, accomplish the following:

Restatement of Certain Requirements of AD 96–11–05

Eddy Current Inspections

(a) For Model A300 series airplanes equipped with General Electric CF6–50C engines, and having pylons that have not been modified in accordance with Airbus Industrie Service Bulletin A300–54–0080, Revision 1, dated January 16, 1995: Prior to the accumulation of 10,900 total landings, or within 500 landings after June 28, 1996 (the effective date of AD 96–11–05, amendment 39–9630), whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–0073, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 6,700 landings.

(2) If any crack is found that is less than 35 millimeters (1.38 inches), prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the Structural Repair Manual (SRM). Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 17,900 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (a)(2) of this AD thereafter at intervals not to exceed 15,000 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent).

(3) If any crack is found that is greater than or equal to 35 mm (1.38 in.), prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(b) For Model A300 series airplanes equipped with General Electric CF6–50C engines, and having pylons that have been modified in accordance with Airbus Industrie Service Bulletin A300–54–0080, Revision 1, dated January 16, 1995: Prior to the accumulation of 30,300 landings since installation of the modification, or within 500 landings after June 28, 1996, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–0073, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the eddy current inspection thereafter at intervals not to exceed 21,300 landings.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(c) For Model A300 series airplanes equipped with Pratt & Whitney JT9D–59A engines, and having pylons that have not been modified in accordance with Airbus Industrie Service Bulletin A300–54–0080, Revision 1, dated January 16, 1995: Prior to the accumulation of 8,600 total landings, or within 500 landings after June 28, 1996, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–0073, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 5,700 landings.

(2) If any crack is found that is less than 35 mm (1.38 in.), prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the SRM. Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 14,200 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (c)(2) of this AD thereafter at intervals not to exceed 12,800 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or by the DGAC (or its delegated agent).

(3) If any crack is found that is greater than or equal to 35 mm (1.38 in.), prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(d) For Model A300 series airplanes equipped with Pratt & Whitney JT9D–59A engines, and having pylons that have been modified in accordance with Airbus Industrie Service Bulletin A300–54–0080, Revision 1, dated January 16, 1995: Prior to the accumulation of 24,000 landings since installation of the modification, or within 500 landings after June 28, 1996, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–0073, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the eddy current inspection thereafter at intervals not to exceed 18,200 landings.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(e) For Model A300–600 series airplanes equipped with General Electric CF6–80C2 engines, and having pylons that have not been modified in accordance with Airbus Industrie Service Bulletin A300 54–6020, dated February 22, 1994: Prior to the

accumulation of 9,400 total landings, or within 500 landings after June 28, 1996, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 6,100 landings.

(2) If any crack is found that is less than or equal to 35 mm (1.38 in.), prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the SRM. Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 15,600 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (e)(2) of this AD thereafter at intervals not to exceed 13,600 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(3) If any crack is found that is greater than or equal to 35 mm (1.38 in.), prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(f) For Model A300–600 series airplanes equipped with General Electric CF6–80C2 engines, and having pylons that have been modified in accordance with Airbus Industrie Service Bulletin A300–54–6020, dated February 22, 1994: Prior to the accumulation of 26,400 landings since installation of the modification, or within 500 landings after June 28, 1996, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the eddy current inspection thereafter at intervals not to exceed 19,400 landings.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(g) For Model A300–600 series airplanes equipped with Pratt & Whitney JT9D–7R4 or PW 4000 engines, and having pylons that have not been modified in accordance with Airbus Industrie Service Bulletin A300–54–6020, dated February 22, 1994: Prior to the accumulation of 5,700 total landings, or within 500 landings after June 28, 1996, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 4,400 landings.

(2) If any crack is found that is less than 35 mm (1.38 in.), prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the SRM. Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 10,100 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (g)(2) of this AD thereafter at intervals not to exceed 10,000 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(3) If any crack is found that is greater than or equal to 35 mm (1.38 in.), prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(h) For Model A300–600 series airplanes equipped with Pratt & Whitney JT9D–7R4 or PW 4000 engines, and having pylons that have been modified in accordance with Airbus Industrie Service Bulletin A300–54–6020, dated February 22, 1994: Prior to the accumulation of 17,000 landings since installation of the modification, or within 500 landings after June 28, 1996, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the eddy current inspection thereafter at intervals not to exceed 14,500 landings.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

New Requirements of This AD

New and Repetitive Inspections for Model A310 Series Airplanes

(i) For Model A310 series airplanes on which the modification specified in Airbus Service Bulletin A310–54–2023, dated October 15, 1993, has not been accomplished: Perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Service Bulletin A310–54–2017, Revision 03, dated June 11, 1999, at the applicable time specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD.

(1) For airplanes that have accumulated fewer than 10,000 total landings as of the effective date of this AD: Inspect prior to the accumulation of 7,000 total landings, or within 1,500 landings after the effective date of the AD, whichever occurs later.

(2) For airplanes that have accumulated 10,000 total landings or more and fewer than 20,000 total landings as of the effective date of this AD: Inspect within 1,000 landings after the effective date of this AD.

(3) For airplanes that have accumulated 20,000 total landings or more as of the effective date of this AD: Inspect within 500 landings after the effective date of this AD.

(j) If no crack is found during the inspection required by paragraph (i) of this AD, accomplish the actions specified by either paragraph (j)(1) or (j)(2) of this AD.

(1) Repeat the inspection thereafter at intervals not to exceed 6,400 landings. Or

(2) Prior to further flight, modify the lower spar between ribs 6 and 7 in accordance with Airbus Service Bulletin A310–54–2023, dated October 15, 1993, and thereafter accomplish the actions required by paragraph (l) of this AD.

(k) If any crack is found during any inspection required by paragraph (i) or (j) of this AD, accomplish the actions required by paragraph (k)(1) or (k)(2) of this AD, as applicable.

(1) If the crack is less than 35 mm (1.38 in.), prior to further flight, repair in accordance with Airbus Service Bulletin A310–54–2017, Revision 03, dated June 11, 1999. Thereafter, within 13,600 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair, and on the fasteners located at the end of the doubler, in accordance with the service bulletin.

(i) If no crack is found during the inspection required by paragraph (k)(1) of this AD, repeat the inspection required by paragraph (i) of this AD thereafter at intervals not to exceed 11,600 landings.

(ii) If any crack is found during the inspection required by paragraph (k)(1) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(2) If the crack is equal to or greater than 35 mm (1.38 in.), prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(l) For Model A310 series airplanes on which the modification specified in Airbus Service Bulletin A310–54–2023, dated October 15, 1993, has been accomplished: Within 23,000 landings after accomplishment of the modification, or within 90 days after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Service Bulletin A310–54–2017, Revision 03, dated June 11, 1999.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 15,500 landings.

(2) If any crack is found during any inspection required by paragraph (l) or (l)(1) of this AD, prior to further flight, repair in accordance with a method approved by the

Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

Alternative Methods of Compliance

(m)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternate methods of compliance approved previously in accordance with AD 96–11–05, Amendment 39–9630, for paragraphs (a) through (h) of that AD, are approved as alternative methods of compliance with paragraphs (a) through (h) of this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(n) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–239–287(B), dated June 2, 1999.

Issued in Renton, Washington, on February 8, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–3397 Filed 2–11–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–4]

Proposed Establishment of Class E Airspace; Andrews—Murphy, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Andrews—Murphy, NC. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Andrews—Murphy, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP.

DATES: Comments must be received on or before March 15, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–4, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–ASO–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Andrews—Murphy, NC. A GPS SIAP, helicopter point in space approach, has been developed for Andrews—Murphy, NC. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASO NC E5 Andrews—Murphy, NC [New]

Andrews—Murphy, NC

Point In Space Coordinates

(Lat. 35°11′10″ N, long. 83°52′57″ W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 35°11′10″ N, long 83°52′57″ W) serving Andrews—Murphy NC; excluding that airspace within the Knoxville. TN, Class E airspace.

* * * * *

Issued in College Park, Georgia, on January 31, 2000.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–3302 Filed 2–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 14, 19, and 25

[Docket No. 99N–4783]

Administrative Practices and Procedures; Good Guidance Practices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its administrative regulations to codify its policies and procedures for the development, issuance, and use of guidance documents. This action is necessary in order to comply with requirements of the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDAMA codifies certain parts of the agency's current ''Good Guidance Practices'' (GGP's) and directs the agency to issue a regulation that is consistent with the Federal Food, Drug, and Cosmetic Act (the act) and that specifies FDA's policies and procedures for the development, issuance, and use of guidance documents. The intended effect of this regulation is to make the agency's procedures for development, issuance, and use of guidance documents clear to the public.

DATES: Submit written comments and recommendations by May 1, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lisa L. Barclay, Office of Policy (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3370.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Presidential Memorandum on Plain Language issued on June 1, 1998, directs FDA to ensure that all of its documents are clear and easy-to-read. Part of achieving that goal involves having readers of a regulation feel that it is speaking directly to them. The agency has attempted to incorporate plain language concepts through the use of pronouns and other plain language in this regulation as much as possible. For example, the agency will be using the term ''you'' to refer to all affected parties outside of the agency. For purposes of this regulation, ''you'' and ''public'' are used interchangeably. The agency would like your comments on how effectively it has used plain language in this regulation, and whether this has made the document more clear and easy to understand.

II. History

In May 1995, the Indiana Medical Device Manufacturer's Council filed a citizen's petition with the agency, which requested, among other things, that FDA establish greater controls over the initiation, development, and issuance of guidance documents to assure the appropriate level of meaningful public participation. In response to this petition, the agency issued a proposed guidance document that set forth the agency's position on how it would proceed in the future with respect to guidance document development, issuance, and use (61 FR 9181, March 7, 1996).

The agency invited public comment on its proposal, and on April 26, 1996, the agency held a public meeting to discuss it. After reviewing and considering all of the comments received during the meeting and the public comment period, the agency finalized its procedures. In the **Federal Register** of February 27, 1997 (62 FR 8961), FDA published a notice announcing the agency's GGP's guidance document (the 1997 GGP document).

The 1997 GGP document provided a definition of guidance; established a standard way of naming guidance documents; described the legal effect of guidance documents; established practices for developing guidance documents and receiving public input; established ways for making guidance documents available to the public; and provided information concerning the agency's existing appeals processes for disputes regarding guidance documents.

On November 21, 1997, the President signed FDAMA into law (Public Law No. 105–115). Section 405 of FDAMA, which added section 701(h) to the act (21 U.S.C. 371(h)), establishes certain aspects of the 1997 GGP document as the law. It also directs the agency to evaluate the effectiveness of the 1997 GGP document and then develop and issue regulations specifying its policies and procedures for the development, issuance, and use of guidance documents. The agency conducted an internal evaluation of the effectiveness of the 1997 GGP document and now is proposing changes to its existing part 10 (21 CFR part 10) regulations to clarify its procedures for development, issuance, and use of guidance documents. The proposal, in large part, tracks the 1997 GGP document. As discussed below in part V.A of this document, any changes from the 1997 GGP document that FDA is proposing are based on the language in FDAMA, or FDA's internal evaluation of GGP's. Your comments on the proposal will help FDA further evaluate the effectiveness of its 1997 GGP document.

III. 1997 GGP Document

The 1997 GGP document issued by the agency in February 1997 provided a great deal of information regarding the agency's procedures for the development, issuance, and use of guidance documents. Below is a brief overview of the key parts of the 1997 GGP document.

First, the 1997 GGP document explained its purpose. The purpose of GGP's is to ensure that agency guidance

documents are developed with the proper amount of your participation, that you have easy access to guidance documents, and that guidance documents are not treated as binding requirements on you or on FDA. The agency also wanted to ensure that every part of the agency followed these policies and procedures the same way.

The 1997 GGP document also clarified what does and does not constitute a guidance document, and it provided examples.

The 1997 GGP document stated that guidance documents themselves do not create rights or responsibilities under the law, and guidance documents are not legally binding on you or on the agency. Instead, guidance documents explain how the agency believes the law applies to certain regulated activities. The 1997 GGP document also noted, however, that a guidance document represents the agency's current thinking on the subject addressed in the document, and it is intended to ensure consistency in the application of laws and regulations. Therefore, FDA supervisors will take steps to ensure that their employees do not make determinations that are different from what is in a guidance document without appropriate justification and supervisory concurrence.

The 1997 GGP document described several different ways that the agency receives your input regarding guidance documents before, during, and after a document's development. The 1997 GGP document also described the internal FDA clearance process for guidance documents.

Under the 1997 GGP document, the agency adopted a two-level approach to the development of guidance documents. Level 1 guidance documents were defined as those documents directed primarily to applicants/sponsors or other members of the regulated industry that set forth first interpretations of statutory or regulatory requirements, changes in interpretation or policy that are of more than a minor nature, unusually complex scientific issues, or highly controversial issues. Level 2 guidance documents included all other documents.

For a Level 1 guidance document, which the agency defined as generally more controversial or new, FDA calls for public input, in most cases, before the document goes into effect. For a Level 2 document, which is generally less novel or controversial in nature, FDA calls for your comments when the document is issued.

The 1997 GGP document established certain standard elements that are included in all guidance documents, including: A standard way of referring to guidance documents; a statement of nonbinding effect; the absence of any language implying that the document is mandatory; and other standard information, such as date of issuance and whether a document is draft or final.

The 1997 GGP document also clarified that FDA will educate and train all current and new FDA employees involved in the development, issuance, and use of guidance documents about the agency's GGP's and will monitor staff to ensure that they are appropriately following GGP's. The GGP guidance also stated that the agency would evaluate whether GGP's are achieving their purpose. According to the 1997 GGP document, lists of guidance documents and the documents themselves will be available to you. The agency will maintain and update this list.

Finally, the 1997 GGP document described an appeals process that provides you with an opportunity to raise an issue regarding whether FDA staff have followed GGP's.

IV. Statutory Requirements Under FDAMA

Section 701(h) of the act (21 U.S.C. 371(h)) codifies certain parts of the 1997 GGP document. Section 701(h)(1)(A) of the act requires the agency to develop guidance documents with public participation and to ensure that information identifying the existence of such documents and the documents themselves are made available to you both in written form and, as feasible, through electronic means.

Section 701(h)(1)(A) of the act further explains that guidance documents shall not create or confer any rights for or on any person, although they represent the views of the agency on matters within its jurisdiction.

Section 701(h)(1)(B) of the act states that guidance documents shall not be binding on the agency, and that the agency shall ensure that its employees do not deviate from such guidances without appropriate justification and supervisory concurrence. Under the statute, the agency is required to: (1) Provide training to employees on how to develop and use guidance documents, and (2) monitor the development and issuance of guidance documents.

For certain categories of guidance documents, the statute requires that the agency ensure public participation in their development prior to implementation. (See section 701(h)(1)(C) of the act.) These categories include documents that: (1) Set forth initial interpretations of a statute or regulation; (2) contain changes in interpretation or policy that are of more than a minor nature; (3) contain complex scientific issues; or (4) contain highly controversial issues. Prior public participation is required for these categories of documents unless the agency determines that such prior public participation is not feasible or appropriate. In such cases, the agency is required to provide for public comment upon implementation and to consider any comments received.

For guidance documents that set forth existing practices or minor changes in policy, section 701(h)(1)(D) of the act requires the agency to provide you with an opportunity to comment upon implementation.

Section 701(h)(2) of the act requires the agency to ensure uniform nomenclature for guidance documents and uniform internal procedures for approval of guidance documents. The agency is also required to ensure that new and revised guidance documents are properly dated and indicate the nonbinding nature of the documents. The statute also requires the agency to conduct periodic reviews of all guidance documents and, where appropriate, revise such documents.

Section 701(h)(3) of the act requires the agency to maintain a list of guidance documents which must be kept electronically, updated, and published periodically in the **Federal Register**. FDA must also make copies of the guidance documents available to the public.

Section 701(h)(4) of the act requires the agency to have an effective appeals mechanism to address complaints that FDA is not developing and using guidance documents in accordance with this provision of the law.

Finally, section 701(h)(5) of the act requires the agency to evaluate the effectiveness of the 1997 GGP document and then to issue regulations specifying its policies and procedures for developing, issuing, and using guidance documents by July 1, 2000.

V. Proposed Regulations

A. Overview

To evaluate the strengths and weaknesses of its GGP's as required by FDAMA, and as stated in its 1997 GGP document, the agency conducted an informal internal survey. The survey solicited information regarding FDA employees' views on the effectiveness of GGP's and questioned whether FDA employees had received complaints regarding the agency's development, issuance, and use of guidance documents since the development of

GGP's. This internal review found that the agency's GGP's have generally been beneficial and effective in standardizing the agency's procedures for development, issuance, and use of guidance documents, and that FDA employees have generally been following GGP's.

As a result of the FDAMA provision and FDA's internal survey, FDA is proposing certain minor changes to the procedures described in its 1997 GGP document. These changes and the reasons for them will be discussed below. As part of its continuing effort to evaluate and improve the development, issuance, and use of guidance documents, the agency is inviting public comment not only on the specific provisions described in the proposed regulation, but also on the 1997 GGP document. FDA is interested in hearing how you view the effectiveness of the procedures described in the 1997 GGP document.

B. Definitions

Proposed § 10.115(a) explains that ''Good Guidance Practices (GGP's) set forth FDA's policies and procedures for developing, issuing, and using guidance documents.''

Proposed § 10.115(b)(1) defines the term ''guidance document.'' While FDAMA did not explicitly require that the agency define the term ''guidance document,'' the agency did so in the 1997 GGP document and has found that a definition helps to increase clarity for affected parties within and outside of the agency. To eliminate certain redundancies, the agency has modified that definition and included it in this proposed regulation. The agency defines guidance documents as those prepared for FDA staff, applicants/sponsors, and the public that describe the agency's interpretation of or policy on a regulatory issue.

The proposed regulation states that guidance documents include, but are not limited to, documents that relate to: (1) The design, production, manufacturing, and testing of regulated products; (2) the processing, content, and evaluation/approval of submissions; and (3) inspection and enforcement policies.

In addition, the agency is clarifying what is not a guidance document. As discussed in the 1997 GGP document, documents that would fall into the nonguidance category include: (1) Those relating to internal FDA procedures, (2) agency reports, (3) general information documents provided to consumers and health professionals, (4) speeches, (5) journal articles and editorials, (6) media interviews, (7) press materials, (8) warning letters, or (9) other communications directed to individual persons or firms.

In clarifying what is not a guidance document, the proposal has added general information documents provided to health professionals and memoranda of understanding. General information documents for health professionals would include documents such as ''Dear Health Professional'' letters. These documents, like general information documents provided to consumers, might describe a public health alert or emergency. In addition, FDA has added memoranda of understanding to the list of documents that would not be considered guidance documents because memoranda of understanding are agreements that FDA makes with other Federal or State government organizations in order to determine who will enforce certain laws. These documents do not articulate agency policy, and therefore they fall outside the definition of a guidance document.

In defining guidance documents, the agency recognizes that there are certain documents directed to its own staff that also would provide guidance to you. The agency, therefore, considers those documents to be guidance documents. However, among FDA's internal documents, there is another category of documents that describe FDA's day-to-day business. While such documents might be interesting to you, they do not fall within the definition of guidance documents. Examples of such documents could include: Staff guides regarding personnel information or leave policies or directives on how to route documents for review within the agency.

Consistent with the distinction drawn in section 701(h)(1)(C) of the act, the agency is proposing in § 10.115(c) to define two levels of guidance documents, which, as discussed below, will be subject to different levels of public participation before issuance. This is the same approach that the agency took in the 1997 GGP document. Level 1 guidance documents include guidance documents that: (1) Set forth initial interpretations of statutory or regulatory requirements; (2) set forth changes in interpretation or policy that are of more than a minor nature; (3) discuss complex scientific issues; or (4) cover highly controversial issues. As discussed below, for Level 1 documents, the agency is generally required by the statute to ensure public participation in their development prior to implementation.

In contrast, Level 2 documents are guidance documents that set forth existing practices or minor changes in interpretation or policy. Level 2 guidance documents include all guidance documents that are not classified as Level 1. As discussed below, according to the statute, for Level 2 documents, the agency is not required to seek comments from you before publication of the document, but the agency must provide for your comment upon implementation.

As discussed above, proposed § 10.115(c)(3) defines ''you'' as all affected parties outside of the agency. ''You'' does not refer to agency employees because the procedures they must follow under GGP's are different than the procedures that you would follow; *e.g.,* FDA employees follow different procedures when they would like to deviate from a guidance document. Under this proposed regulation, ''you'' and ''public'' are used interchangeably.

C. Legal Effect of Guidance Documents

Consistent with section 701(h)(1)(A) and (h)(1)(B) of the act, proposed § 10.115(d) describes the nonbinding effect of guidance documents. Specifically, it provides that guidance documents do not establish legally enforceable rights or responsibilities. They do not legally bind you or the agency.

Proposed § 10.115(d) further provides that you may choose to use an approach other than the one set forth in a guidance document. However, the alternative approach must comply with the relevant statutes and regulations. If you would like to choose an alternate approach, FDA is willing to discuss that approach with you to ensure that it complies with all relevant laws and regulations.

The proposed regulation also clarifies that although guidance documents do not legally bind FDA, they represent the agency's current thinking. Therefore, FDA employees may depart from guidance documents only with appropriate justification and supervisory concurrence.

Because the agency's issuance of GGP's is an attempt to make its processes for initially communicating new or different regulatory expectations to a broad public audience consistent across the agency, proposed § 10.115(e) clarifies that FDA should not use other methods or documents to informally provide this information. Consistent with the 1997 GGP document, the agency is proposing that GGP's must be followed whenever interpretations of law or policy that are not readily apparent from the statute or regulations

are first communicated to a broad public audience.

D. Public Participation in the Development and Issuance of Guidance

Section 701(h)(1)(A) of the act requires FDA to develop guidance documents with your participation. Proposed § 10.115(f) describes how you may participate in the development and issuance of FDA's guidance documents. These mechanisms for your input include: (1) Suggestions for areas of guidance document development; (2) submission of drafts of guidance documents to FDA for consideration; (3) suggestions about revisions of an existing guidance document; (4) submission of comments on an annual list of possible topics for future FDA guidance documents; and (5) submission of comments on specific proposed and final guidance documents.

The 1997 GGP document stated that the agency would issue its list of possible topics for future FDA guidance document development or revision twice a year. However, given its experience with GGP's thus far, the agency has determined that publishing the list once a year would be more workable and just as informative. If the agency were to publish such a list semiannually, it would likely publish essentially the same list twice.

The 1997 GGP document also provided that FDA would not be bound by its list of possible topics for future FDA guidance documents. In other words, FDA would not be required to issue a guidance document on every topic identified in that list. Similarly, FDA would not be stopped from issuing a guidance document on a topic not identified on the list. FDA will apply that same principle to the annual list.

If you want FDA to draft a guidance document on a particular issue or to revise an existing guidance document, you should contact the Center or Office that is responsible for the regulatory activity covered by the guidance document. For purposes of this regulation, FDA is using the term ''office'' to refer to offices that are agency components comparable to a Center, *e.g.* Office of the Commissioner, Office of Regulatory Affairs, or Office of the Chief Counsel, not offices with a given Center. You should include a statement explaining why the new or revised document is necessary. If FDA agrees to draft or revise a guidance document, it will follow the procedures described in proposed § 10.115(g).

Proposed § 10.115(g) describes the agency's procedures for the development and issuance of a guidance document. These procedures are similar to those described in the 1997 GGP document. As stated above in proposed § 10.115(c), the agency will determine, depending on its content, whether each guidance document is a Level 1 or Level 2 document.

1. Level 1 Procedures

Proposed § 10.115(g)(1) describes the procedures for developing and issuing most Level 1 guidance documents. Under proposed § 10.115(g)(1), before FDA drafts a Level 1 guidance document, FDA may seek or accept early input from individuals or groups outside the agency. For example, FDA may do this by participating in or holding meetings and workshops.

After FDA prepares a draft of a Level 1 guidance document, FDA will publish a notice in the **Federal Register** announcing that the draft guidance document is available. FDA will post the draft on the Internet and make it available in hard copy. FDA will invite your comments on the draft guidance document. Procedures for submission of your comments on guidance documents are described in proposed § 10.115(h).

After it prepares a draft of a Level 1 guidance document, FDA may also hold additional public meetings or workshops, or it may present the draft guidance document to an advisory committee for review.

After providing an opportunity for your comment on a draft Level 1 guidance document, FDA will review any comments it has received. FDA will prepare the final version of the guidance document that incorporates suggested changes, when appropriate. FDA then will publish a notice in the **Federal Register** announcing that the guidance document is available. FDA will post the guidance document on the Internet and make it available in hard copy. As discussed in the 1997 GGP document, when FDA issues a final guidance document, FDA is not obligated to address each comment specifically.

After providing an opportunity for comment, FDA may decide that it is appropriate to issue another draft of the guidance document. In this case, FDA will again solicit comment by publishing a notice in the **Federal Register**, posting a draft on the Internet, and making the draft available in hard copy. FDA would then proceed to issue a final version of the guidance document in the manner described above.

Proposed § 10.115(g)(1) is consistent with the 1997 GGP document. Minor changes have been made to clarify the types of early input that FDA may accept. In addition, FDA has clarified that it does not post a separate notice of availability of a guidance document on the Internet, but rather it posts the actual guidance document on the Internet. Copies of the **Federal Register** notices of availability are available on the Internet at http://www.fda.gov.

Section 701(h)(1)(C) of the act provides that the agency is not required to seek your comment before it implements a Level 1 guidance document if your prior participation is not feasible or appropriate. Proposed § 10.115(g)(2) mirrors the words of the statute. In the 1997 GGP document, the agency provided that it would not seek your comment before implementing a Level 1 guidance document if: (1) There are public health reasons for immediate implementation of the guidance document; (2) there is a statutory requirement, executive order, or court order that requires immediate implementation; or (3) the guidance document presents a less burdensome policy that is consistent with public health. The agency plans to continue to apply the same three exceptions, but it reserves the authority to provide for other exceptions that are consistent with section 701(h)(1)(C) of the act, if the need arises.

Proposed § 10.115(g)(3) describes the procedures that FDA will use for developing and issuing Level 1 guidance documents that fall under the exception discussed above. For that certain small class of guidance documents, FDA will: (1) Publish a notice in the **Federal Register** announcing that the guidance document is available; (2) post the guidance document on the Internet and make it available in hard copy; and (3) seek your comment when it issues or publishes the guidance document. If FDA receives comments on one of the excepted guidance documents, FDA will review those comments and revise the guidance document, when appropriate.

2. Level 2 Procedures

Proposed § 10.115(g)(4) describes the procedures for developing and issuing Level 2 guidance documents, as defined in § 10.115(c)(2). As set forth in section 701(h)(1)(D)of the act, FDA may implement a Level 2 guidance document at the same time that it issues the document and solicits public comment. After it prepares a Level 2 guidance document, FDA will publish the guidance document on the Internet and provide an opportunity for your comment at that time. Similar to the procedures for Level 1, if FDA receives comments on a Level 2 guidance document, FDA will review those comments and revise the document,

when appropriate. FDA may also, at its discretion, seek public comment before it implements a Level 2 guidance document.

You will know when a Level 2 guidance document has been issued because it will be posted on the Internet. In addition, FDA's electronic comprehensive list will be updated within 30 days of issuance and FDA's annual **Federal Register** list will identify all guidance documents that have been issued since the previous list was published.

In an effort to make the agency's guidance document development process as open as possible, proposed § 10.115(g)(5) provides that you may submit comments on any guidance document (Level 1 or Level 2, draft or final) at any time. FDA will review all of the comments that it receives and will revise guidance documents in response to your comments, when appropriate. When draft Level 1 guidance documents are issued under proposed § 10.115(g)(1), and when Level 1 guidance documents are issued under proposed § 10.115(g)(3), there will be a period of time established for the receipt of comments. All comments received during that period will be reviewed and considered immediately. Comments received after the closing date of the specified comment period will be reviewed as soon as possible and issues raised in those comments may be addressed in a future revision of the document, as the agency deems appropriate.

Proposed § 10.115(h) tells you how to submit comments on guidance documents. If you choose to submit comments on a guidance document, you must send them to the Dockets Management Branch. The comments submitted should identify the docket number on the guidance document, if such a docket number exists. For documents that do not have a docket number assigned, the comments should refer to the title of the document. Once comments have been received on a guidance document, the Dockets Management Branch will establish a docket for that document, and all additional comments will be routed to that docket. Comments will be available to the public in accordance with FDA's regulations at § 10.20(j).

Such comments will be available at the Dockets Management Branch, and, when feasible, on the Internet. In its 1997 GGP document, the agency directed all comments on Level 1 documents to the Dockets Management Branch, and comments on all Level 2 documents to the document's originating office. Based on its internal review, the agency has decided that it can better track comments if they are all submitted to the docket, as proposed in § 10.115(h).

E. FDA's Internal Procedures

Consistent with section 701(h)(2) of the act and the 1997 GGP document, proposed § 10.115(i) describes the standard elements that must be included in each guidance document. The agency is proposing that all guidance documents: (1) Include the term ''guidance;'' (2) identify the Center or Office issuing the document; (3) identify the activity and people to which the document applies; (4) include a statement of the document's nonbinding effect; (5) include the date of issuance; note if it is a revision to a previously issued guidance document and identify the document that it replaces; and (6) contain the word ''draft'' if the document is a draft guidance document.

Historically, FDA has issued regulatory guidance to its field staff through documents called Compliance Policy Guides (CPG's), and those documents have come to be recognized by that name. Therefore, the agency will continue to issue CPG's, but each CPG will also include the term ''guidance'' in its subtitle in order to clarify that it does fall within the definition of a guidance document.

Consistent with the 1997 GGP document, the statement of nonbinding effect will generally read as follows: ''This guidance document represents the agency's current thinking on * * *. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.''

Proposed § 10.115(i)(2) also provides that, due to the nonbinding nature of guidance documents, certain mandatory language cannot be included in guidance documents, unless the agency is using these words to describe a statutory or regulatory requirement. Examples of such language includes words like ''shall,'' ''must,'' ''required,'' or ''requirement.''

Consistent with section 701(h)(2) of the act, proposed § 10.115(j) provides that all FDA Centers and Offices must have procedures for the internal clearance of guidance documents that ensure that this responsibility is given to the appropriate senior agency officials. Under the 1997 GGP document, an Office Director in a Center or an Office of Regulatory Affairs equivalent or higher approves a Level 1 guidance before it goes out to the public in draft or final. The Office of Chief Counsel approves a draft or final guidance document that describes new legal interpretations. The Office of Policy approves the release of a draft or final guidance document that describes significant changes in agency policy.

Under the 1997 GGP document, an official at Division Director level or higher approves a Level 2 guidance document before it goes out to the public. Because, by definition, Level 2 documents are less controversial or novel, the clearance of a Level 2 guidance document does not usually involve as many senior agency officials.

FDA's current plan is to keep the minimum sign off procedures described in the 1997 GGP document. The agency is not including them in its proposal because it does not think it is appropriate to describe these internal procedures in a regulation. Moreover, some Centers or Offices have chosen to have their guidance document sign-off take place at a level that is higher than that described in the 1997 GGP document. Nothing in this regulation will affect that practice.

Proposed § 10.115(k) describes procedures for FDA review and revision of existing guidance documents. Under these procedures, the agency will review periodically existing guidance documents to determine whether they need to be changed or withdrawn. When significant changes are made to the statute or regulations, the agency will review and, if appropriate, revise guidance documents relating to that changed statute or regulation. In addition, your comments may at any time suggest that FDA revise a guidance document. Those suggestions should address why the guidance document should be revised and how it should be revised.

Proposed § 10.115(l) describes procedures for how the agency plans to ensure consistent application of GGP's. Under these procedures, all current and new FDA employees involved in the development, issuance, or application of guidance documents will be trained regarding the agency's GGP's.

In addition, on a regular basis, FDA Centers and Offices will monitor the development, issuance, and use of guidance documents to ensure that employees are following good guidance practices.

The 1997 GGP document provided that the agency would educate the public about the legal effect of guidance and that FDA staff should take the opportunity to state and explain the legal effect of guidance when speaking to the public about guidance

documents. Although the agency believes that the 1997 GGP document, the inclusion of the statement of the nobinding effect on all guidance documents, and the FDA public pronouncements about the legal effect of guidance have made great strides in educating the public about the legal effect of guidance, the agency believes that it is important that these education efforts continue. Therefore, as part of its employee training, FDA will direct its employees to continue educating the public about the nonbinding effect of guidance.

F. Public Access to Guidance Documents

Section 701(h)(1)(A) of the act requires FDA to ensure that information about the existence of guidance documents and guidance documents themselves are made available to you in written form, and, as feasible, through electronic means. Proposed § 10.115(m) and (n) incorporate that requirement.

Proposed § 10.115(m) provides that FDA will make copies available in hard copy and, as feasible, through the Internet. All new recently issued guidance documents have been made available through the Internet, but there are some documents that were issued prior to issuance of the 1997 GGP document that are not available in an electronic version that can be easily included on the Internet.

Proposed § 10.115(n) tells you how you can get a list of all of FDA's guidance documents. Under proposed § 10.115(n), FDA will maintain a current list of all guidance documents on the Internet at www.fda.gov/opacom/morechoices/industry/guidedc.htm. New documents will be added to this list within 30 days of issuance. Although the agency recognizes that the Internet is an a easy and efficient tool for distribution of public information, it will continue to make its guidance document list available through the **Federal Register**. Once a year, FDA will publish a comprehensive list of guidance documents in the **Federal Register**.

In the 1997 GGP document, the agency stated that it would provide quarterly updates to the annual comprehensive **Federal Register** list. However, the agency has been unable to issue timely updates. The agency believes that the annual **Federal Register** list plus the current list on the Internet is more workable for the agency and is consistent with the statutory requirement. However, the agency would like to receive your comments on this proposed change.

FDA's guidance document lists will include: (1) The name of the guidance document, issuance and revision dates; and (2) information on how to obtain copies of the document.

G. Dispute Resolution

Section 701(h)(4) of the act requires the agency to have adequate procedures in place to address complaints regarding the development and use of guidance documents. Proposed § 10.115(o) describes such procedures. If you believe that someone at FDA did not follow the procedures in § 10115(o) or that someone at FDA treated a guidance document as a binding requirement, you should contact that person's supervisor in the Center or Office that issued the guidance document. If the issue cannot be resolved at that level, you should contact the next highest supervisor. If the issue still remains unresolved at the level of the Center or Office Director or if you feel that you are not making progress by going through the chain of command, you may ask the Office of the Chief Mediator and Ombudsman to become involved.

H. Conforming Changes

The agency is also proposing conforming changes to its regulations at § 10.90(b) that describe the agency's procedures for guidelines. For many years, the agency issued documents articulating regulatory guidance that were referred to as ''guidelines.'' However, since the development of GGP's, the agency has moved to referring to all documents that provide you with guidance as ''guidance documents.'' To make these regulations consistent, the agency is proposing to revise § 10.90(b) to eliminate reference to the term guideline, and instead cross-reference the procedures for development, issuance, and use of guidance documents at § 10.115. In addition, the agency is proposing to make conforming changes throughout parts 10, 14, 19, and 25 (21 CFR parts 14, 19, and 25) to ensure that the term ''guidance document'' replaces the term ''guideline,'' as appropriate.

VI. Comments Received by the Agency

After the passage of FDAMA, the agency was faced with a large burden in the implementation of the new statute. In an effort to make the agency's processes more open and transparent, as well as to solicit your input on how various FDAMA provisions should be implemented, the agency issued a notice in the **Federal Register** establishing special FDAMA dockets (63 FR 40719, July 30, 1998). These dockets, which were assigned to specific provisions of the statute, allowed you to submit comments or proposals to the agency regarding how the provisions should be implemented.

The agency received one such comment on section 405 of FDAMA. The comment raised several suggestions as to how this provision should be implemented. These suggestions and FDA's responses are discussed below.

1. The comment suggested that FDA solicit input before it solidifies its views on an approach for a new guidance.

The agency agrees that it is important to solicit your input at the earliest possible time. That is why it is proposing to create several mechanisms for your early input, including: (1) An opportunity to suggest new or revised guidance, (2) notification that it is considering new or revised guidance, (3) notification that it is issuing certain guidance documents, and (4) the ability to hold meetings or workshops before a draft document is developed. In addition, the reason that FDA solicits comments on a guidance document is because its views are not solidified, and the agency seeks your input regarding decisions about what final guidance documents will contain.

2. The comment noted that the legislative history accompanying section 405 of FDAMA stated that Congress ''intends that FDA will waive [the] requirement for prior public participation only in rare and extraordinary circumstances where there is a compelling rationale.'' The comment reads this standard to mean situations involving a public health emergency.

The agency does not interpret this exception so narrowly. In the 1997 GGP document, the agency provided limited exceptions to the prior public participation requirement, including situations where: (1) There are public health reasons for immediate implementation of the guidance document; (2) there is a statutory requirement, executive order, or court order that requires immediate implementation; or (3) the guidance document presents a less burdensome policy that is consistent with public health. The agency continues to believe that these exceptions are both consistent with the intent of Congress in FDAMA and necessary for the timely issuance of important guidance documents.

3. The comment suggested that the agency accept input on whether a planned guidance document involves a significant or minor change in policy, *i.e.,* whether it is a Level 1 or Level 2 guidance document. Again, the agency welcomes your input on all of its guidance documents, including

comment regarding whether the documents have been appropriately classified as Level 1 or Level 2.

FDA will review comments received about designation as a Level 1 or Level 2 document, but in the interest of issuing guidance in a timely manner, the agency does not believe that it is necessarily beneficial to systematically receive comment on all of these designations prior to issuance of guidance documents.

4. The comment noted that section 405 of FDAMA provided that FDA employees should not deviate from guidance documents without appropriate justification and supervisory concurrence. Therefore, the comment requests that FDA provide a requester with written notice when it determines to deviate from a guidance document, and state the given reasons for such deviation.

While the agency completely agrees that FDA employees should not deviate from guidance without appropriate justification and supervisory concurrence, it disagrees that it should provide the requester with written notice stating the reasons for such deviations. However, the agency will, upon request, explain why it is deviating from the guidance at the time that it makes its decision to do so.

Moreover, if a requester disagrees with how a guidance document has been applied, or not applied, FDA has an appeals process set up for requesters to raise concerns.

5. The comment noted the importance of training FDA staff on how to develop and use guidance documents in a manner consistent with section 405 of the statute, and recommends that the agency should collaborate with industry and other stakeholders on training, where appropriate.

The agency agrees with this comment, and has numerous mechanisms in place to train FDA employees effectively about the appropriate development and use of guidance documents. In addition, the agency recognizes the importance of collaboration with its stakeholders. While the agency welcomes your suggestions about how its training could be most effective, the agency believes that FDA should conduct its own training of FDA staff.

6. The comment suggested that FDA should work to ensure consistency in the application of guidance documents across the Centers.

The agency agrees and will work to ensure consistent application of guidance documents by receiving comment from around the agency regarding certain cross-cutting guidance documents, and ensuring appropriate clearance by various Centers or Offices, if they are affected by the guidance document. The focus of GGP's is to achieve this goal, and the agency believes that the proposed regulations seek to address concerns about consistent application of guidance across the agency.

7. The comment noted that the statute requires that FDA ensure that an effective appeals mechanism be in place to address complaints about the development or use of guidance documents. The comment suggested that the agency be committed to resolve these disputes as quickly and amicably as possible through the cooperative exchange of views, in accordance with current dispute resolution policies. In addition, the comment requested that when multiple requesters raise complaints in a particular area, it should trigger a special inquiry by senior agency policy staff, and renewed training, if appropriate.

The agency agrees with this comment. FDA will seek to resolve disputes quickly and efficiently. When multiple problems arise, FDA will engage senior policy officials in the dispute, and will retrain staff, when appropriate.

8. The comment noted the importance of FDA's periodic review of existing guidance documents, with revisions made to those documents, as necessary. It suggested that FDA set up a system for periodic review that fosters individual accountability for updating guidance documents. The comment suggested that such a process might include soliciting public input as quickly as possible, accepting proposals from the public on guidance documents, and responding in writing to all such proposals within 60 days.

The agency agrees that it should conduct periodic reviews of guidance documents, but reserves the discretion to set up an informal system for this review process. Because of resource constraints and in the interest of issuing all guidance documents in a timely manner, the agency declines to require itself to respond in writing to suggested guidance proposals within a given timeframe. However, the agency is committed to ensuring that guidance documents are updated and revised as frequently as necessary, and to reviewing public input regarding those potential revisions. The agency is also committed to reviewing all of your proposals submitted for future regulatory guidance, but declines to set up a system whereby all written proposals are responded to in writing.

9. Lastly, the comment stated that section 405 of FDAMA makes clear that FDA should not develop or modify policies and procedures through informal mechanisms such as speeches or statements at meetings that it has not previously dealt with through regulation or prior guidances.

The agency agrees with this comment. The fundamental premise behind GGP's is increased consistency in the development, issuance, and use of guidance documents; ensuring consistency of procedures is the goal of the proposed regulations. The agency is committed to ensuring that these principles are upheld, and urges you to notify FDA if you become aware of FDA employees first communicating agency policy through informal mechanisms such as speeches or statements at meetings.

VII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement would be required.

VIII. Analysis of Impact

FDA has examined the impacts of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires an analysis of regulatory options that would minimize any significant impact of a rule on small entities. The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. This proposed rule does not impose any mandates on State, local, or tribal governments, nor is it a significant

regulatory action under the Unfunded Mandates Reform Act. Furthermore, the agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further regulatory flexibility analysis is required.

IX. Paperwork Reduction Act of 1995

FDA concludes that this proposed regulation would impose no reporting or recordkeeping requirements. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Comments

Interested persons may, on or before May 1, 2000, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 10

Administrative practices and procedures, News media, Good Guidance Practices.

21 CFR Part 14

Administrative practices and procedures, Advisory committees, Color additives, Drugs, Radiation protection.

21 CFR Part 19

Conflict of interests.

21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 10, 14, 19, and 25 be amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

§§ 10.20, 10.45, and 10.85 [Amended]

2. In 21 CFR part 10, remove the words ''guideline'' and ''guidelines'' wherever they appear and add in their place the words ''guidance document'' and ''guidance documents'', respectively, in the following places:

a. Section 10.20(j)(1)(v),

b. Section 10.45(d), and

c. Section 10.85(d)(5).

3. In § 10.90, remove the words ''guideline'' and ''guidelines'' wherever they appear and add in their place the words ''guidance document'' and ''guidance documents'', respectively, and revise the section heading and paragraph (b) to read as follows:

§ 10.90 Food and Drug Administration regulations, guidance documents, recommendations, and agreements.

* * * * *

(b) *Guidance documents.* FDA guidance documents, as that term is defined in § 10.115, will be developed, issued, and used according to the requirements at § 10.115.

* * * * *

4. Add § 10.115 to subpart B to read as follows:

§ 10.115 Good Guidance Practices.

(a) What are good guidance practices? Good guidance practices (GGP's) set forth FDA's policies and procedures for developing, issuing, and using guidance documents.

(b) How is the term ''guidance document'' defined?

(1) Guidance documents are documents prepared for FDA staff, applicants/sponsors, and the public that describe the agency's interpretation of or policy on a regulatory issue.

(2) Guidance documents include, but are not limited to, documents that relate to: The design, production, manufacturing, and testing of regulated products; the processing, content, and evaluation/approval of submissions; and inspection and enforcement policies.

(3) Guidance documents do not include: Documents relating to internal FDA procedures, agency reports, general information documents provided to consumers or health professionals, speeches, journal articles and editorials, media interviews, press materials, warning letters, memoranda of understanding, or other communications directed to individual persons or firms.

(c) What other terms have a special meaning?

(1) ''Level 1 guidance documents'' include guidance documents that:

(i) Set forth initial interpretations of statutory or regulatory requirements,

(ii) Set forth changes in interpretation or policy that are of more than a minor nature,

(iii) Include complex scientific issues, or

(iv) Cover highly controversial issues.

(2) ''Level 2 guidance documents'' are guidance documents that set forth existing practices or minor changes in interpretation or policy. Level 2 guidance documents include all guidance documents that are not classified as Level 1.

(3) ''You'' refers to all affected parties outside of FDA.

(d) Are you or FDA required to follow a guidance document?

(1) No. Guidance documents do not establish legally enforceable rights or responsibilities. They do not legally bind the public or FDA.

(2) You may choose to use an approach other than the one set forth in a guidance document. However, your alternative approach must comply with the relevant statutes and regulations. FDA is willing to discuss an alternative approach with you to ensure that it complies with the relevant statutes and regulations.

(3) Although guidance documents do not legally bind FDA, they represent the agency's current thinking. Therefore, FDA employees may depart from guidance documents only with appropriate justification and supervisory concurrence.

(e) Can FDA use means other than a guidance document to communicate new agency policy or a new regulatory approach to a broad public audience? The agency may not use documents and other means of communication that are excluded from the definition of guidance document to informally communicate new or different regulatory expectations to a broad public audience for the first time. These GGP's must be followed whenever regulatory expectations that are not readily apparent from the statute or regulations are first communicated to a broad public audience.

(f) How can you participate in the development and issuance of guidance documents?

(1) You may provide input on guidance documents that FDA is developing under the procedures described in paragraph (g) of this section.

(2) You may suggest areas for guidance document development. Your suggestions should address why a guidance document is necessary. You may also submit drafts of guidance documents to FDA to consider.

(3) You may, at any time, suggest that FDA revise an already existing guidance

document. Your suggestion should address why the guidance document should be revised and how it should be revised.

(4) Once a year, FDA will publish, in both the **Federal Register** and on the Internet, a list of possible topics for future guidance document development or revision during the next year. You may comment on this list (*e.g.,* by suggesting alternatives or recommendations about the topics that FDA is considering).

(5) To participate in the development and issuance of guidance documents through one of the mechanisms described in paragraph (f)(1), (f)(2), or (f)(3) of this section, you should contact the Center or Office that is responsible for the regulatory activity covered by the guidance document.

(6) If FDA agrees to draft or revise a guidance document, under a suggestion made under paragraph (f)(1), (f)(2), or (f)(3) of this section, you may participate in the development of that guidance document under the procedures described in paragraph (g) of this section.

(g) What are FDA's procedures for developing and issuing guidance documents?

(1) FDA's procedures for the development and issuance of Level 1 guidance documents are as follows:

(i) Before FDA prepares a draft of a Level 1 guidance document, FDA may seek or accept early input from individuals or groups outside the agency. For example, FDA may do this by participating in or holding public meetings and workshops.

(ii) After FDA prepares a draft of a Level 1 guidance document, FDA will:

(A) Publish a notice in the **Federal Register** announcing that the draft guidance document is available;

(B) Post the draft guidance document on the Internet and make it available in hard copy; and

(C) Invite your comment on the draft guidance document. Paragraph (h) of this section tells you how to submit your comments.

(iii) After FDA prepares a draft of a Level 1 guidance document, FDA also may:

(A) Hold additional public meetings or workshops; or

(B) Present the draft guidance document to an advisory committee for review.

(iv) After providing an opportunity for public comment on a Level 1 guidance document, FDA will:

(A) Review any comments received and prepare the final version of the guidance document that incorporates suggested changes, when appropriate;

(B) Publish a notice in the **Federal Register** announcing that the guidance document is available;

(C) Post the guidance document on the Internet and make it available in hard copy; and

(D) Implement the guidance document.

(v) After providing an opportunity for comment, FDA may decide that it should issue another draft of the guidance document. In this case, you should follow the steps in paragraphs (g)(1)(ii), (g)(1)(iii), and (g)(1)(iv) of this section.

(2) FDA will not seek your comment before it implements a Level 1 guidance document if the agency determines that prior public participation is not feasible or appropriate.

(3) FDA will use the following procedures for developing and issuing Level 1 guidance documents under the circumstances described in paragraph (g)(2) of this section.

(i) After FDA prepares a guidance document, FDA will:

(A) Publish a notice in the **Federal Register** announcing that the guidance document is available;

(B) Post the guidance document on the Internet and make it available in hard copy;

(C) Implement the guidance document when it is made available; and

(D) Invite your comment when it issues or publishes the guidance document. Paragraph (h) of this section tells you how to submit your comments.

(ii) If FDA receives comments on the guidance document, FDA will review those comments and revise the guidance document when appropriate.

(4) FDA will use the following procedures for developing and issuing Level 2 guidance documents:

(i) After it prepares a guidance document, FDA will:

(A) Post the guidance document on the Internet and make it available in hard copy;

(B) Implement the guidance document when it is made available, unless FDA indicates otherwise; and

(C) Invite your comment on the Level 2 guidance document. Paragraph (h) of this section tells you how to submit your comments.

(ii) If FDA receives comments on the guidance document, FDA will review those comments and revise the document when appropriate. If a version is revised, the new version will be placed on the Internet.

(5) You may comment on any guidance document at any time. Paragraph (h) of this section tells you how to submit your comments. FDA will revise guidance documents in response to your comments when appropriate.

(h) How should you submit comments on a guidance document?

(1) If you choose to submit comments on any guidance document under paragraph (g) of this section, you must send them to the Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

(2) Comments should identify the docket number on the guidance document, if such a docket number exists. For documents without a docket number, the title of the guidance document should be included.

(3) Comments will be available to the public in accordance with FDA's regulations on submission of documents to the Dockets Management Branch specified in § 10.20(j).

(i) What standard elements must FDA include in a guidance document?

(1) A guidance document must:

(i) Include the term ''guidance,''

(ii) Identify the Center(s) or Office(s) issuing the document,

(iii) Identify the activity to which and the people to whom the document applies,

(iv) Include a statement of the document's nonbinding effect,

(v) Include the date of issuance,

(vi) Note if it is a revision to a previously issued guidance and identify the document that it replaces, and

(vi) Contain the word ''draft'' if the document is a draft guidance.

(2) Guidance documents must not include mandatory language such as ''shall,'' ''must,'' ''required,'' or ''requirement,'' unless FDA is using these words to describe a statutory or regulatory requirement.

(j) Who, within FDA, can approve issuance of guidance documents? Each Center and Office must have in place appropriate procedures for the approval of guidance documents. Those procedures must ensure that issuance of all documents is approved by appropriate senior FDA officials.

(k) How will FDA review and revise existing guidance documents?

(1) The agency will periodically review existing guidance documents to determine whether they need to be changed or withdrawn.

(2) When significant changes are made to the statute or regulations, the agency will review and, if appropriate, revise guidance documents relating to that changed statute or regulation.

(3) As discussed in paragraph (f)(3) of this section, you may at any time suggest that FDA revise a guidance document.

(l) How will FDA ensure that FDA staff are following GGP's?

(1) All current and new FDA employees involved in the development, issuance, or application of guidance documents will be trained regarding the agency's GGP's.

(2) FDA Centers and Offices will monitor the development and issuance of guidance documents to ensure that GGP's are being followed.

(m) How can you get copies of FDA's guidance documents? FDA will make copies available in hard copy and as feasible, through the Internet.

(n) How will FDA keep you informed of the guidance documents that are available?

(1) FDA will maintain a current list of all guidance documents on the Internet. New documents will be added to this list within 30 days of issuance.

(2) Once a year, FDA will publish its comprehensive list of guidance documents in the **Federal Register**. The comprehensive list will identify documents that have been added to the list or withdrawn from the list since the previous comprehensive list.

(3) FDA's guidance document lists will include the name of the guidance document, issuance and revision dates, and information on how to obtain copies of the document.

(o) What can you do if you believe that someone at FDA is not following these GGP's? If you believe that someone at FDA did not follow the procedures in this section or that someone at FDA treated a guidance document as a binding requirement, you should contact that person's supervisor in the Center or Office that issued the guidance document. If the issue cannot be resolved, you should contact the next highest supervisor. If you are unable to resolve the issue at the level of the Center/Office Director or if you feel that you are not making progress by going through the chain of command, you may ask the Office of the Chief Mediator and Ombudsman to become involved.

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

5. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 42 U.S.C. 201, 262, 263b, 264; 15 U.S.C. 1451–1461; 5 U.S.C. App. 2; 28 U.S.C. 2112.

§§ 14.27 and 14.33 [Amended]

6. In 21 CFR part 14, remove the word ''guidelines'' and add in its place the word ''guidance documents'' in the following places:

a. Section 14.27(b)(3) and

b. Section 14.33(c).

PART 19—STANDARDS OF CONDUCT AND CONFLICTS OF INTEREST

7. The authority citation for 21 CFR part 19 continues to read as follows:

Authority: 21 U.S.C. 371.

§ 19.10 [Amended]

8. In § 19.10(c), remove the word ''guidelines'' and add in its place the word ''guidance documents''.

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

9. The authority citation for 21 CFR part 25 continues to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 262, 263b–264; 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514, 35 FR 4247, 3 CFR 1971 Comp., p. 531–533 as amended by E.O. 11991, 42 FR 26967, 3 CFR 1978 Comp., p. 123–124 and E.O. 12114, 44 FR 1957, 3 CFR 1980 Comp., p. 356–360.

§ 25.30 [Amended]

10. In § 25.30(h), remove the word ''guidelines'' and add in its place the word ''guidance documents''.

Dated: February 8, 2000.

Margaret Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–3344 Filed 2–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4425–N–09]

Negotiated Rulemaking Committee on Operating Fund Allocation; Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Negotiated Rulemaking Committee meetings.

SUMMARY: This document announces a meeting of the Negotiated Rulemaking Committee on Operating Fund Allocation. These meetings are sponsored by HUD for the purpose of discussing and negotiating a proposed rule that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs).

DATES: The committee meeting will be held on February 16 and February 17, 2000. On February 16, 2000, the meeting will begin at approximately 9:30 am and end at approximately 5:30 pm. On February 17, 2000, the meeting will begin at approximately 9:00 am and end at approximately 4:00 pm.

ADDRESSES: The committee meeting will take place at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza East, SW, Washington, DC 20024; telephone 1–800–635–5065 or (202) 484–1000; FAX (202) 863–4497 (With the exception of the ''800'' telephone number, these are not toll-free numbers).

FOR FURTHER INFORMATION CONTACT: Steve Sprague, Acting Director, Funding and Financial Management Division, Office of Public and Indian Housing, Room 4216, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1872 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of HUD has established the Negotiated Rulemaking Committee on Operating Fund Allocation to negotiate and develop a proposed that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs). The establishment of the committee is required by the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998) (the ''Public Housing Reform Act''). The Public Housing Reform Act makes extensive changes to HUD's public and assisted housing programs. These changes include the establishment of an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. The Public Housing Reform Act requires that the assistance to be made available from the new Operating Fund be determined using a formula developed through negotiated rulemaking procedures.

II. Negotiated Rulemaking Committee Meeting

This document announces a meeting of the Negotiated Rulemaking Committee on Operating Fund Allocation. The next committee meeting will take place as described in the **DATES** and **ADDRESSES** section of this document.

The agenda planned for the committee meeting includes the development and review of draft regulatory and preamble language; and the scheduling of future meetings, if necessary.

The meeting will be open to the public without advance registration. Public attendance may be limited to the

space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

Dated: February 10, 2000.

Jacqueline Johnson,

Deputy Assistant Secretary for Native Programs.

[FR Doc. 00–3481 Filed 2–10–00; 2:30 pm]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–097–FOR, Part III]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions to a previously proposed amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois proposed revisions to its program concerning subsidence control, water replacement, adjustment of performance bonds, administrative review, release of performance bonds, siltation structures, impoundments, hydrologic balance, disposal of noncoal mine wastes, revegetation, backfilling and grading, prime farmland, and State inspections. Illinois intends to revise its program to be consistent with the corresponding Federal regulations, to provide additional safeguards, and to improve operational efficiency.

DATES: We will accept written comments until 4:00 p.m., e.s.t., February 29, 2000.

ADDRESSES: Written comments should be mailed or hand delivered to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Illinois program, the amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521, Telephone: (317) 226–6700.

Illinois Department of Natural Resources, Office of Mines and Minerals, Land Reclamation Division, 300 W. Jefferson Street, Suite 300, Springfield, IL 62701, Telephone: (217) 782–4970.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the June 1, 1982, **Federal Register** (47 FR 23883). You can find later actions concerning the Illinois program at 30 CFR 913.15, 913.16, and 913.17.

II. Discussion of the Proposed Amendment

By letter dated August 2, 1999 (Administrative Record No. IL–5044), Illinois sent us an amendment to its program under SMCRA. Illinois sent the amendment in response to our letters dated May 20, 1996, June 17, 1997, October 30, 1997, and January 15, 1999 (Administrative Record Nos. IL–1900, IL–2000, IL–2002, and IL–5036, respectively), that we sent to Illinois under 30 CFR 732.17(c).

We announced receipt of the amendment in the August 17, 1999, **Federal Register** (64 FR 44674) and invited public comment on its adequacy. The public comment period ended September 16, 1999.

During our review of the amendment, we identified concerns relating to siltation structures, impoundments, performance bonds, and State inspections. We also identified some nonsubstantive editorial errors. We notified Illinois of these concerns and editorial problems by letter dated September 21, 1999 (Administrative Record No. IL–5048). We also separated the amendment into three parts in order to expedite the State program amendment process. Part I concerned revisions to Illinois' regulations relating to subsidence control and water replacement. Because we did not identify any concerns relating to Illinois' revisions for subsidence control and water replacement, we made our final decision on them in a final rule on December 6, 1999 (64 FR 68024). Part II concerned revisions to Illinois' regulations relating to adjustment of performance bond amounts and administrative review. On December 2, 1999, the Department requested that we proceed with our decision on these revisions (Administrative Record No. IL–5049). Because we did not identify any concerns relating to Illinois' revisions for adjustment of performance bond amounts and administrative review, we made our decision on them in a final rule on December 27, 1999 (64 FR 72275). Part III concerns revisions to Illinois' regulations relating to release of performance bonds, siltation structures, impoundments, hydrologic balance, disposal of noncoal mine wastes, revegetation, backfilling and grading, prime farmland, and State inspections. This proposed rule **Federal Register** document addresses IL–097–FOR, Part III. By letter dated January 27, 2000, Illinois sent us a revised amendment (Administrative Record No. IL–5052).

Illinois proposed minor wording, editorial, punctuation, grammatical, and recodification changes throughout its amendment. Illinois proposed more substantive revisions for the following provisions of its amendment:

A. 62 IAC 1701. Appendix A, Definitions

Illinois removed the following definition of ''Institute'' because it is no longer applicable to the Illinois program:

> ''Institute'' means the Department of Energy and Natural Resources or such other agency as designated by the Director in accordance with Section 7.03 of the State Act.

B. 62 IAC 1780.25 (Surface Mining) and 1784.16 (Underground Mining) Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments

1. Illinois is revising the introductory paragraphs of its regulations at 62 IAC 1780.25(a) and 1784.16(a) to require that each application include a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

2. Illinois is revising the last sentence of 62 IAC 1784.16(a)(2) by replacing the language ''does not meet'' with the language ''meets or exceeds.'' The revised sentence reads as follows:

Each detailed design plan for a structure that meets or exceeds the size or other criteria of 30 CFR 77.216(a) shall:

3. Illinois is revising 62 IAC 1780.25(a)(2)(B) and 1784.16(a)(2)(B) to read as follows:

Include any geotechnical investigation, design, and construction requirements for the structure.

4. Illinois is revising 62 IAC 1784.16(a)(3)(B) to read as follows:

Include any design and construction requirements for the structure, including any required geotechnical information.

C. 62 IAC 1800.40 Requirement to Release Performance Bonds

1. By adding the following sentence to 62 IAC 1800.40(a)(1), Illinois clarified that the Department will meet the notification and certification requirements of section 1800.40(a)(2) and (3) when it initiates an application for bond release.

For bond releases initiated by the Department, the Department shall undertake the notification and certification requirements of the applicant under this Section.

2. At 62 IAC 1800.40(b)(2), Illinois added a requirement that the Department notify by certified mail the municipality and county in which the surface coal mining operation is located of its final administrative decision to release or not to release all or part of the performance bond.

D. 62 IAC 1840.11 Inspection by the Department

Illinois is withdrawing from its proposed amendment the revision at 62 IAC 1840.11(f)(2) that defined an inactive surface coal mining and reclamation operation as one for which ''the Department has determined that the reclamation required for Phase II bond release has been completed.''

III. Public Comment Procedures

We are reopening the comment period on the Illinois program amendment to provide you an opportunity to reconsider the adequacy of the amendment in light of the additional materials sent to us. Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Illinois program.

Written Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. IL–097–FOR, Part III'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Indianapolis Field Office at (317) 226–6700.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and published by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 2, 2000.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 00–3293 Filed 2–11–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD01–99–050]

RIN 2115–AA97

Temporary Regulations: OPSAIL 2000/ International Naval Review 2000 (INR 2000), Port of New York/New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a proposed rule published in the **Federal Register** of February 7, 2000, concerning temporary regulations for Port of New York/New Jersey during OPSAIL 2000. That document contained incomplete regulatory text in two sections and a correction is necessary.

FOR FURTHER INFORMATION CONTACT: LT J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–493.

SUPPLEMENTARY INFORMATION:

Correction

In proposed rule FR Doc 00–2245, on page 5844, first column, in § 110.155 and § 165T01–050 the proposed regulatory text is incompletely set out and a correction is needed.

Correction of publication.

Accordingly, the publication on February 7, 2000, of the notice of proposed rulemaking [CGD01–99–050], which is the subject of FR Doc. 00–2245, is corrected as follows:

1. On page 5842, third column, amendment 2.h. is corrected to read as follows:

h. Add new paragraphs (o) and (p).

2. On page 5844, first column, in proposed § 110.155 add paragraph (p) immediately after paragraph (o)(2)(iii) to read as follows:

(p) *Temporary Amendment Applicable Dates and Times*

(1) From 12 noon on June 29, 2000 through 12 noon on July 5, 2000:

(i) The introductory text added at the beginning of this section is applicable.

(ii) The suspension of paragraphs (d)(1) through (5), (d)(10)(i), (n)(1), the introductory text of paragraph (d)(16), and the note to paragraph (f)(1) of this section is applicable.

(iii) The additon of new paragraphs (d)(10)(ii), and (d)(17) through (20) of this section are applicable.

(2) The suspension of paragraphs (d)(7) through (9) of this section is applicable from 3 a.m., e.s.t. on July 3, 2000 through 12 noon on July 5, 2000.

(3) From 3 a.m., e.s.t. on July 3, 2000 through 6 a.m., e.s.t. on July 5, 2000:

(i) The suspension of paragraph (d)(12)(i) of this section is applicable.

(ii) The additions of new paragraphs (d)(11)(iii), (d)(12)(iii) and (iv), (d)(13)(vi), (d)(14)(iv), and (d)(15)(iii) of this section are applicable.

(4) From 6 a.m., e.s.t. on July 2, 2000 through 4 p.m., e.s.t. on July 4, 2000:

(i) The suspensions of paragraphs (m)(2)(i) and (ii), and (m)(3)(i) of this section are applicable.

(ii) The additions of new paragraphs (m)(2)(iii), (m)(3)(ii), and (e)(1)(iii) of this section are applicable.

(5) From 6 a.m., e.s.t. on July 2, 2000 through 12 noon on July 5, 2000, the addition of new paragraph (o) of this section is applicable.

(6) From 12 noon on July 2, 2000 through 12 noon on July 5, 2000, the addition of new paragraphs (c)(1)(ii), (c)(2)(ii) and (c)(3)(ii) of this section are applicable.

3. On page 5844, first column, proposed § 165.T01–050 is corrected to read as follows:

§ 165.T01–050 Security Zones: International Naval Review (INR) 2000, Hudson River and Upper New York Bay.

(a) The following areas are established as security zones:

(1) Security Zone A—

(i) *Location:* This security zone includes all waters within 500 yards of the U.S. Navy review ship and the zone will move with the review ship as it transits the Hudson River and Upper New York Bay during the International Naval Review between the George Washington Bridge (river mile 11.0) and the Verrazano-Narrows Bridge.

(ii) *Enforcement period.* Paragraph (a)(1)(i) of this section is enforced from 7 a.m., e.s.t. until 11 a.m., e.s.t. on July 4, 2000.

(2) Security Zone B—

(i) *Location.* All waters within 500 yards of the USS JOHN F. KENNEDY (CV–67), in Federal Anchorage 21B.

(ii) *Enforcement period.* Paragraph (a)(2)(i) of this section is enforced from 10 a.m., e.s.t. until 5 p.m., e.s.t. on July 4, 2000.

(b) *Effective period.* This section is effective from 7 a.m., e.s.t. on July 4, 2000, until 5 p.m., e.s.t. on July 4, 2000.

(c) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: February 8, 2000.

Pamela Pelcovits,

Chief, Office of Regulations and Administrative Law, United States Coast Guard, DOT.

[FR Doc. 00–3384 Filed 2–11–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–6535–3]

Extending Operating Permits Program Interim Approval Expiration Dates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the operating permits regulations of EPA. Those regulations were originally promulgated on July 21, 1992. These amendments would extend up to June 1, 2002, all operating permits program interim approvals. This action would allow State and local permitting authorities to combine the operating permits program revisions necessary to correct interim approval deficiencies with program revisions necessary to implement the revisions that are anticipated to be promulgated in late 2001.

DATES: *Comments.* Comments must be received on or before March 15, 2000.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–93–50 (see docket section below), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Docket. Supporting material used in developing the proposal and final regulatory revisions is contained in Docket Number A–93–50. This docket is available for public inspection and copying between 8:30 a.m. and 5:30 p.m., Monday through Friday, at the address listed above, or by calling (202) 260–7548. The Docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Roger Powell, Mail Drop 12, United States Environmental Protection Agency, Research Triangle Park, North

Carolina 27711 (telephone 919–541–5331, e-mail: powell.roger@epa.gov).

SUPPLEMENTARY INFORMATION: If no relevant, adverse comments are timely received, no further activity is contemplated in relation to this proposal, and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in that final rulemaking. Public comment received will be addressed in a subsequent final rule based on this proposal. Because EPA will not institute a second comment period on this proposal, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule provisions, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Administrative Requirements

A. Docket

The docket for this proposed action is A–93–50. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that the parties can effectively participate in the rulemaking process and (2) To serve as the record in case of judicial review (except for interagency review materials). The docket is available for public inspection at EPA's Air Docket, which is listed under the **ADDRESSES** section of this notice.

B. Executive Order (E.O.) 12866

Under E.O. 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether each regulatory action is ''significant,'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

1. Have an annual effect on the economy of $100 million or more, adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof.

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Pursuant to the terms of E.O. 12866, it has been determined that this proposed action is not a ''significant'' regulatory action because it would not substantially change the existing part 70 requirements for States or sources; requirements which have already undergone OMB review. Rather than impose any new requirements, this action would only extend an existing mechanism. As such, this action is exempted from OMB review.

C. Regulatory Flexibility Act Compliance

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this proposed action would not have a significant economic impact on a substantial number of small entities. In developing the original part 70 regulations, the Agency determined that they would not have a significant economic impact on a substantial number of small entities. Similarly, the same conclusion was reached in an initial regulatory flexibility analysis performed in support of the proposed part 70 revisions. This action would not substantially alter the part 70 regulations as they pertain to small entities and accordingly would not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in part 70 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq. and has assigned OMB control number 2060–0243. The Information Collection Request (ICR) prepared for part 70 would not be affected by the action in this proposed rulemaking action because the part 70 ICR determined burden on a nationwide basis, assuming all part 70 sources were included without regard to the approval status of individual programs. The action in this proposed rulemaking action, which would simply provide for an extension of the interim approval of certain programs, would not alter the assumptions of the approved part 70 ICR used in determining the burden estimate. Furthermore, this proposed action would not impose any additional requirements which would add to the information collection requirements for sources or permitting authorities.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the action in this proposed rule would not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector, in any one year. Although the part 70 regulations governing State operating permit programs impose significant Federal mandates, this proposed action would not amend the part 70 regulations in a way that would significantly alter the expenditures resulting from these mandates. Therefore, the Agency concludes that it is not required by section 202 of the UMRA of 1995 to provide a written statement to

accompany this proposed regulatory action.

F. Applicability of Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that EPA determines (1) ''Economically Significant'' as defined under Executive Order 12866 and (2) Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to E.O. 13045, because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

G. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposal would not create new requirements but would only extend an existing mechanism to allow permitting authorities to more efficiently revise their operating permits programs. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. It does not result in any expenditure of tribal government revenue or have any impact on tribal governments because it applies only to State and local permitting programs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by one or more voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative Practice and Procedure, Air pollution control, Intergovernmental relations.

Dated: February 4, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–3206 Filed 2–11–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 99–23]

In the Matter of a Single Individual Contemporaneously Acting as the Qualifying Individual for Both an Ocean Freight Forwarder and a Non-Vessel-Operating Common Carrier

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rule.

SUMMARY: The Federal Maritime Commission amends its regulations

pertaining to the licensing requirements of ocean transportation intermediaries in accordance with the Shipping Act of 1984, as amended by The Ocean Shipping Reform Act of 1998. We are also republishing a certification process pertaining to drug convictions that was previously omitted.

DATES: Submit comments on the proposed rule on or before February 28, 2000.

ADDRESSES: Address comments concerning the proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, D.C. 20573–0001.

FOR FURTHER INFORMATION CONTACT:

Austin L. Schmitt, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573–0001, (202) 523–5796

Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol St., NW, Washington, DC 20573–0001, (202) 523–5740

SUPPLEMENTARY INFORMATION: On November 10, 1999, the National Customs Brokers & Forwarders Association of America (''NCBFAA'' or ''Petitioner'') filed a Petition in which it requests that the Commission issue a declaratory order confirming, pursuant to 46 CFR 515.11(c)(1999), that a single individual can act contemporaneously as the qualifying individual for both an ocean freight forwarder and a non-vessel-operating common carrier (''NVOCC''), as long as they are affiliated entities. In the alternative, NCBFAA seeks a rulemaking to amend § 515.11(c) to achieve the same result. Notice of the filing of the Petition appeared in the **Federal Register** on November 19, 1999. 64 FR 63318. No comments were received in response to the Petition. For the reasons set forth more fully below, the Commission grants NCBFAA's request to issue a Notice of Proposed Rulemaking.

Background

Effective May 1, 1999, the Commission promulgated final rules to implement changes made to the Shipping Act of 1984 (''1984 Act''), 46 U.S.C. app. section 1701 *et seq.*, by the Ocean Shipping Reform Act of 1998 (''OSRA''), Pub L. 105–258, 112 Stat. 1902. In Docket No. 98–28, *Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries*, the Commission solicited comments, and ultimately published final rules at 46 CFR part 515, governing ocean transportation intermediaries (''OTIs''). *See* 64 FR 11155, March 8, 1999. OSRA essentially defines OTIs as ocean freight forwarders and NVOCCs as those terms were originally defined by the 1984 Act. Section 515.11 of the Commission's rules sets forth the requirements for obtaining an OTI license in accordance with OSRA's directive that all OTIs in the United States obtain one. Section 515.11(c) provides:

> *Affiliates of intermediaries.* An independently qualified applicant may be granted a separate license to carry on the business of providing ocean transportation intermediary services even though it is associated with, under common control with, or otherwise related to another ocean transportation intermediary through stock ownership or common directors or officers, if such applicant submits: a separate application and fee, and a valid instrument of financial responsibility in the form and amount prescribed under § 515.21. The qualifying individual of one active licensee shall not also be designated as the qualifying individual of an applicant for another ocean transportation intermediary license, except for a separately incorporated branch office.

46 CFR 515.11(c).

The Petition

In its Petition, NCBFAA asserts that it is crucial for the Commission to address this issue in a formal proceeding, contending ''the Commission appears to be administering § 515.11(c) in a manner which is fundamentally at odds with the letter and spirit of the interpretation of this provision as stated in its final rule, Docket No. 98–28.'' Petition at 2. NCBFAA argues that in its comments in Docket No. 98–28, it requested that the Commission ''specifically affirm the principle that a qualifying individual is permitted to be a corporate officer of more than a single company.'' *Id.* NCBFAA states that the basis of its request was that many OTIs are relatively small companies that have elected to provide their forwarding and NVOCC services through separate corporate entities for a variety of business reasons. NCBFAA notes that the Commission ''appeared to be sympathetic'' with this position during the rulemaking proceeding when it ''affirm[ed] that a person may be the qualifying individual for more than one company,'' and further when it added the phrase ''except for a separately incorporated branch office'' to proposed section 515.11(c). *Id.* (quoting 64 FR 11158).

NCBFAA points out that when the Commission added the ''except for a separately incorporated branch office'' language to § 515.11(c), it ''meant that separately incorporated branch offices will be permitted to have the same qualifying individuals for licensing purposes.'' *Id.* (quoting 64 FR 11158). However, NCBFAA further contends that only when OTIs were filing their license applications after the rules became effective May 1, 1999, were they informed that only applicants in a parent-subsidiary relationship would be permitted to have the same qualifying individual. NCBFAA objects to the Commission's refusal ''to allow affiliated OTIs owned by a single individual or holding company to share the same person as qualifying individual despite the fact that these corporations are controlled by the same parent and often have identical officers,'' and claims that this ''apparent departure from [the Commission's] expressed policy caught the OTI industry by surprise.'' *Id.*

In submitting its comments to Docket No. 98–28, NCBFAA maintains that it had in mind the numerous small companies that were already organized to provide forwarding and NVOCC services through separate corporate entities, and opines that these companies are the most disadvantaged by what it calls the Commission's ''present restrictive interpretation of § 515.11(c).'' Petition at 3. To remedy the problems presented by the ''except for a separately incorporated branch office'' language, NCBFAA submits that ''if a corporate applicant for an OTI license is affiliated with another applicant or licensee either as a subsidiary, parent or sibling corporation and if an individual is an officer in both entities, that person should be allowed to be the qualifying individual for both companies.'' Petition at 4.

NCBFAA believes that a clarification of the Commission's rule would be sufficient to address the problem, but in the alternative, if the Commission believes that the rule needs to be amended, it suggests amending § 515.11(c) as follows:

> The qualifying individual of one active licensee shall not also be designated contemporaneously as the qualifying individual of an applicant for another ocean transportation intermediary license, unless the entities are affiliated and the person who is to be the qualifying individual is an officer of both entities.

Further, NCBFAA suggests that the term ''affiliated'' be construed to include situations where the relevant companies are commonly controlled or where one directly controls the other. *Id.*

Discussion

At the outset, the Commission denies the Petition for a Declaratory Order, as it is not the proper forum for addressing

the issue raised here. Rule 68 of the Commission's Rules of Practice and Procedure, 46 CFR 502.68, provides that the Commission may, in its discretion, issue a declaratory order to terminate a controversy or to remove uncertainty. 46 CFR 502.68(a)(1)(1999). The rule further provides that this section shall be invoked solely for the purpose of obtaining declaratory rulings which will allow persons to act without peril upon their own view. 46 CFR 502.68(b)(1999).

We do not believe that the Petition provides sufficient information to satisfy the requirements of Rule 68. There is no controversy or uncertainty with respect to the interpretation of § 515.11(c) to be terminated or removed, respectively. Section 515.11(c) contains the express restriction that a qualifying individual of one active licensee may not be a qualifying individual for another OTI licensee, except for a separately incorporated branch office. There is no ambiguity in this proviso, particularly when it is read in conjunction with the definition of branch office:

> Branch office means any office in the United States established by or maintained by or under the control of a licensee for the purpose of rendering intermediary services, which office is located at an address different from that of the licensee's designated home office. This term does not include a separately incorporated entity.

We disagree that the Commission's interpretation of § 515.11(c) represents a departure from its expressed policy and thereby creates an ambiguity; rather, this is a matter in which the Commission took a more narrow approach in enacting § 515.11(c) than NCBFAA originally sought during the rulemaking proceeding in Docket No. 98–28. The language and interpretation of § 515.11(c) are the same as they were pre-OSRA, except for the addition of the branch office language which lessens the restrictions pertaining to qualifying individuals. In fact, NCBFAA acknowledges that this is helpful, although it does not address the problems faced by the closely affiliated entities. Petition at 2.

Nor is there a controversy within the meaning of the rule such that Petitioner is acting at peril of violating the regulations. Upon application of the criteria of the current provision, the OTIs Petitioner claims are most harmed by § 515.11(c) would be denied licenses to operate and would be so advised. Moreover, the Commission's Bureau of Tariffs, Certification and Licensing has refrained from denying licenses on this basis until the conclusion of this proceeding. Thus, there is no basis for any claim that OTIs are currently acting at some peril of violating the OTI licensing rules based on the identity of their qualifying individual. We conclude, therefore, that a declaratory order is not the appropriate mechanism for relief.

However, we believe that a Notice of Proposed Rulemaking is the proper venue for allowing the Petitioner to seek relief in the form of a proposed rule change. We are aware that since the implementation of the new rules effective May 1, 1999, some entities have been affected by this provision. Although § 515.11(c) remains largely the same as the provisions in § 510.11(c) of the Commission's pre-OSRA regulations, OSRA now requires that all OTIs in the United States, rather than only ocean freight forwarders, obtain a license. As a consequence, this provision has had a restrictive impact on those entities that are jointly held in some manner. We are especially mindful of the burden imposed on sole proprietors who operate both an NVOCC and an ocean freight forwarder. We do not want these entities to be required unnecessarily to modify their existing business structures to comply with OSRA and its implementing regulations. To that end, the Commission is issuing this notice of proposed rulemaking to broaden § 515.11(c) to allow affiliated entities to have the same qualifying individual to obtain a license under this part. We are, however, modifying the language suggested by Petitioner to effect this change.

The last sentence of § 515.11(c) currently states:

> The qualifying individual of one active licensee shall not also be designated as the qualifying individual of an applicant for another ocean transportation intermediary license, except for a separately incorporated branch office.

In its Petition, NCBFAA suggests replacing ''except for a separately incorporated branch office'' with ''unless the entities are affiliated and the person who is to be the qualifying individual is an officer of both entities.'' Petition at 4. We find that proposal to be redundant, however, because the rules already specify who may be a qualifying individual, including not only an active corporate officer or an active managing partner, but also a sole proprietor. *See* 46 CFR 515.11(b). Further, NCBFAA suggests that the term ''affiliated'' be construed to include situations where the relevant companies are commonly controlled or where one directly controls the other. Petition at 4. We prefer to make this explicit in the rule, rather than leave it open to interpretation. Thus, the Commission proposes the following amendment to the last sentence of § 515.11(c):

> The qualifying individual of one active licensee shall not also be designated as the qualifying individual of an applicant for another ocean transportation intermediary license, unless both entities are commonly owned or where one directly controls the other.

This proposal is somewhat broader than that urged by Petitioner. It encompasses not only the type of entities described by NCBFAA in support of its Petition, but also the multiple offices such as those licensed under the ''separately incorporated branch office'' provision in the current § 515.11(c). Moreover, we have incorporated into the express language of the proposed rule NCBFAA's suggestion that the rule be construed to include situations where the relevant companies are commonly controlled or where one directly controls the other, so as to prevent any misunderstanding or confusion with respect to those requirements.

In conjunction with the proposed amendment to § 515.11(c), we also at this time seek to amend the definition of ''branch office'' at 46 CFR 515.2(c), by removing the last sentence of the definition, which states that the term does not include a separately incorporated branch office. The Commission has recognized separately incorporated branch offices elsewhere in part 515, particularly with respect to licensing and financial responsibility requirements. This proposed modification should remove any potential confusion.

Other Correction

In promulgating the rules to implement OSRA in Docket No. 98–28, we inadvertently failed to carry over § 510.12(a)(2) into part 515. That section was a certification process to effect the requirements of 21 U.S.C. 862, which provides that Federal benefits shall be withheld in certain circumstances from individuals who have been convicted of drug distribution or possession in Federal or state courts. As described in the original proceeding, a license issued by the Commission is considered to be a Federal benefit. Further, if an individual is banned from receiving Federal benefits pursuant to 21 U.S.C. 862, the Commission has no discretion in the matter; this section merely establishes a practice and procedure for implementing the ban. *See* 55 FR 42193, October 18, 1990 and 59 FR 59171, November 16, 1994. Therefore, we are republishing the omitted section at this time.

Initial Regulatory Flexibility Analysis

Why the Commission Is Considering the New Rule

On November 10, 1999, the NCBFAA filed a Petition requesting that the Commission issue a declaratory order, confirming, pursuant to 46 CFR 515.11(c)(1999), that a single individual can act contemporaneously as the qualifying individual for both an ocean freight forwarder and an NVOCC, as long as they are affiliated entities. In the alternative, NCBFAA seeks a rulemaking to amend § 515.11(c) to achieve the same result. For reasons set forth more fully in the supplementary information of the proposed rulemaking, the Commission decided to grant NCBFAA's request to issue a Notice of Proposed Rulemaking.

Legal Basis and Objectives for the New Rule

Effective May 1, 1999, the Commission promulgated final rules to implement changes made to the 1984 Act, 46 U.S.C. app. § 1701 *et seq.*, by OSRA, Pub. L. 105–258, 112 Stat. 1902. *See* 64 FR 11155, March 8, 1999. Section 515.11(c) of those rules provides:

Affiliates of intermediaries. An independently qualified applicant may be granted a separate license to carry on the business of providing ocean transportation intermediary services even though it is associated with, under common control with, or otherwise related to another ocean transportation intermediary through stock ownership or common directors or officers, if such applicant submits: a separate application and fee, and a valid instrument of financial responsibility in the form and amount prescribed under § 515.21. The qualifying individual of one active licensee shall not also be designated as the qualifying individual of an applicant for another ocean transportation intermediary license, except for a separately incorporated branch office. 46 CFR 515.11(c).

Since the implementation of the new rules effective May 1, 1999, some entities have been affected by this provision. Although § 515.11(c) remains largely unchanged since OSRA's enactment, OSRA now requires that all OTIs in the United States, rather than only ocean freight forwarders, obtain a license. As a consequence, this provision has had a restrictive impact on those entities that are jointly held in some manner. The Commission is especially mindful of the burden imposed on sole proprietors who operate both as an NVOCC and an ocean freight forwarder. The Commission does not want these entities to be required unnecessarily to modify their existing business structures to comply with OSRA and its implementing regulations. To that end, the Commission is issuing a notice of proposed rulemaking to broaden § 515.11(c) to allow affiliated entities to have the same qualifying individual to obtain a license under this part.

Description of and Estimate of the Number of Small Entities to Which the New Rule Will Apply

It is estimated that the proposed rulemaking will benefit OTIs that act as qualifying individuals for both affiliated ocean freight forwarders and NVOCCs. At present, there are approximately 600 OTIs with affiliated ocean freight forwarder and NVOCC operations affected by the proposed rulemaking, including approximately 20 sole proprietorships.

Entities affected by the current rule, particularly sole proprietors, could be required to modify their existing business structures, either by (1) Merging their affiliated ocean freight forwarder and NVOCC operations, (2) creating a branch office, or (3) hiring a qualifying individual to oversee their operations. However, the Commission's Bureau of Tariffs, Certification and Licensing has refrained from denying licenses on this basis pending the conclusion of this proceeding.

Projected Reporting, Record Keeping and Other Compliance Requirements of the New Rule

The Commission is not aware of any additional reporting, record keeping or other compliance requirements as a result of the proposed rulemaking. Rather, the Commission believes that the impact of the proposed rulemaking will primarily be to benefit sole proprietorship OTIs that act as qualifying individuals for both affiliated ocean freight forwarders and NVOCCs.

The benefit of the proposed rulemaking can be measured primarily as the savings to sole proprietorships of not having to modify their business structures as described above. Moreover, the proposed rulemaking will benefit corporations and partnerships with affiliated freight forwarder and NVOCC operations by giving them greater flexibility in selecting a single qualifying individual for both organizations. However, it is not feasible to specifically quantify these benefits because individual OTI operations vary dramatically in scope and overhead.

The Chairman cannot certify that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. However, the Commission believes that the proposed rulemaking will have no adverse impact on small entities. Further, the Commission believes that the impact of the proposed rulemaking will be to benefit OTIs that act as qualifying individuals for both affiliated ocean freight forwarders and NVOCCs.

Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the New Rule

The Commission is not aware of any other federal rules that duplicate, overlap, or conflict with the proposed rulemaking.

List of Subjects in 46 CFR Part 515

Exports, Freight forwarders, Non-vessel-operating common carriers, Ocean transportation intermediaries, Licensing requirements, Financial responsibility requirements, Reports and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Maritime Commission proposes to amend 46 CFR chapter IV, subchapter B, as set forth below:

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES OF OCEAN TRANSPORTATION INTERMEDIARIES

1. The authority citation is amended to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718, Pub. L. 105–383, 112 Stat. 3411, 21 U.S.C. 862.

2. In § 515.2, revise paragraph (c) to read as follows:

§ 515.2 Definitions.

* * * * *

(c) *Branch office* means any office in the United States established by or maintained by or under the control of a licensee for the purpose of rendering intermediary services, which office is located at an address different from that of the licensee's designated home office.

* * * * *

3. In § 515.11, revise paragraph (c) to read as follows:

§ 515.11 Basic requirements for licensing; eligibility.

* * * * *

(c) *Affiliates of intermediaries.* An independently qualified applicant may be granted a separate license to carry on the business of providing ocean transportation intermediary services even though it is associated with, under common control with, or otherwise related to another ocean transportation intermediary through stock ownership or common directors or officers, if such applicant submits: a separate

application and fee, and a valid instrument of financial responsibility in the form and amount prescribed under § 515.21. The qualifying individual of one active licensee shall not also be designated as the qualifying individual of an applicant for another ocean transportation intermediary license, unless both entities are commonly owned or where one directly controls the other.

4. In § 515.12, revise paragraph (a) to read as follows:

§ 515.12 Application for license.

(a) *Application and forms.*

(1) Any person who wishes to obtain a license to operate as an ocean transportation intermediary shall submit, in duplicate, to the Director of the Commission's Bureau of Tariffs, Certification and Licensing, a completed application Form FMC–18 Rev. (''Application for a License as an Ocean Transportation Intermediary'') accompanied by the fee required under § 515.5(b). All applications will be assigned an application number, and each applicant will be notified of the number assigned to its application. Notice of filing of such application shall be published in the **Federal Register** and shall state the name and address of the applicant and the name and address of the qualifying individual. If the applicant is a corporation or partnership, the names of the officers or partners thereof shall be published.

(2) An individual who is applying for a license in his or her own name must complete the following certification:

I, (Name) , certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or state offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to 21 U.S.C. 862.

* * * * *

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 00–3325 Filed 2–11–00; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF75

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Hackelia venusta (Showy Stickseed)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose endangered species status pursuant to the Endangered Species Act (Act) of 1973, as amended, for *Hackelia venusta* (Piper) St. John (showy stickseed). The species is a narrow endemic limited to one small population on unstable, granitic scree located on the lower slopes of Tumwater Canyon, Chelan County, Washington. The population has declined to the current size of less than 150 individual plants at the single location in Tumwater Canyon. Threats include competition and shading from native trees and shrubs, encroachment onto the site by nonnative, noxious plant species, wildfire and fire suppression, activities associated with fire suppression, and low seedling establishment. In the past, highway maintenance activities, such as the spreading of sand and salt during winter months and the application of herbicides, have threatened the species and may do so in the future. Reproductive vigor may be depressed because of the plant's small population size and limited gene pool. A single natural or human-caused random environmental disturbance could destroy a significant percentage of the population. This proposal, if made final, would implement the Federal protection and recovery programs of the Act for this plant.

DATES: We must receive comments from all interested parties by April 14, 2000. Public hearing requests must be received by March 30, 2000.

ADDRESSES: Send comments and materials concerning this proposal to the Manager, U.S. Fish and Wildlife Service, Western Washington Office, 510 Desmond Drive, Suite 102, Lacey, Washington 98503–1273. Comments and materials received will be available, by appointment, for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ted Thomas, (see **ADDRESSES** section), telephone 360/753–4327; facsimile 360/753–9518.

SUPPLEMENTARY INFORMATION:

Background

Hackelia venusta (showy stickseed) is a showy perennial herb of the Borage family (Boraginaceae). The plant was originally described by Charles Piper as *Lappula venusta,* based on a collection from Tumwater Canyon, Chelan County, Washington made by J. C. Otis in 1920 (Piper 1924). In 1929, Harold St. John reexamined the specimen and placed it in the related genus *Hackelia* upon recognizing that, being a perennial plant, it more properly fit with *Hackelia* than *Lappula,* a genus of annual plants (St. John 1929).

Hackelia venusta is a short, moderately stout species, 20 to 40 centimeters (cm) (8 to 16 inches (in)) tall, often with numerous, erect to ascending stems from a slender taproot. It has large, showy, five-lobed flowers that are white and reach approximately 1.9 to 2.2 cm (0.75 to 0.87 in) across. Basal leaves are 7 to 14 cm (2.8 to 5.5 in) long and 0.64 to 1.3 cm (0.25 to 0.5 in) wide, while the upper stem leaves are 2.5 to 5.1 cm (1 to 2 in) long and 0.38 to 0.64 cm (0.15 to 0.25 in) wide (Barrett *et al.* 1985). The fruit consists of a prickly nutlet, approximately 0.38 to 0.43 cm (0.15 to 0.17 in) long, and is covered with stiff hairs that aid in dispersal by wildlife. *Hackelia venusta* is morphologically uniform and is distinct from other species occurring in central Washington. It can be distinguished from other species in the genus, in part, by its smaller stature, shorter leaf length, fewer basal leaves, and the large size of the flowers. High-elevation *Hackelia* populations that have, in the past, been assigned to *Hackelia venusta* have distinct morphological features with the most obvious distinction being blue flowers. The Tumwater Canyon flowers are white, and on rare occasion, washed with blue. Other distinct morphological characteristics between the Tumwater Canyon and the high-elevation *Hackelia* populations are limb width, plant height, and radical leaf length (Harrod *et al.* 1998).

Hackelia venusta is shade-intolerant (Robert Carr, Eastern Washington University, pers. comm. 1998) and grows in openings within ponderosa pine (*Pinus ponderosa*) and Douglas-fir (*Pseudotsuga menziesii*) forest types. This vegetation type is described as the Douglas-fir zone by Franklin and Dyrness (1973, updated in 1988). *Hackelia venusta* is found on open, steep slopes (minimum of 80 percent inclination) of loose, well-drained,

granitic weathered and broken rock fragmented soils at an elevation at about 486 meters (m) (1,600 feet (ft)). The type specimen for *Hackelia venusta* was collected at a site between Tumwater and Drury in Tumwater Canyon approximately 9.6 kilometers (km) (6 miles (mi)) west of Leavenworth, Washington. *Hackelia venusta* is restricted to this single population in Tumwater Canyon. The population is found in an area designated as the Tumwater Canyon Botanical Area by the Wenatchee National Forest. This designation was originally established in 1938 to protect a former candidate plant, *Lewisia tweedyi* (Tweedy's lewisia), that is more widespread than previously considered (F.V. Horton, U.S. Forest Service, *in litt.* 1938; U.S. Forest Service 1971). The designation for the botanical area remains because of the presence of *Hackelia venusta* and *Silene seelyi* (Seeley's catch-fly), a potential candidate for listing.

Three other locations within 20 km (12 mi) of the type locality were thought to harbor *Hackelia venusta.* One location near Crystal Creek Cirque was relocated in 1986 after not having been seen since 1947 (Gamon 1988a). A second location near Asgard Pass was not discovered until 1987 (Gamon 1988a). The Asgard Pass population was apparently extirpated by a major landslide during 1994 or 1995 (Richy Harrod, U.S. Forest Service, pers. comm. 1996). A third location was discovered on Cashmere Mountain in August 1996 (Richy Harrod, U.S. Forest Service, pers. comm. 1996). The Crystal Creek and Cashmere Mountain locations occur about 10 km (6 mi) apart and are both within the Alpine Lakes Wilderness Area of the Wenatchee National Forest. Elevations for these populations range from 1,920 to 2,255 m (6,300 to 7,400 ft). Recent information indicates these two high-elevation locations are a distinct taxon, different from the *Hackelia venusta* found in the Tumwater Canyon population (Harrod *et al.* 1998). The Tumwater Canyon plants have a larger white corolla, a taller habit, remote lower leaves, and in general, the leaves are less stiff and leathery. The Crystal Creek and Cashmere Mountain populations, in contrast, have small, blue flowers and are more compact. The population at Tumwater Canyon does not have individuals that are intermediate in these characters. Also, the Tumwater Canyon population is geographically and reproductively isolated from the Crystal Creek and Cashmere Mountain populations. The Crystal Creek and Cashmere Mountain populations are temporally isolated from the Tumwater Canyon population in relation to their local seasons and climatic zones. The Tumwater Canyon population flowers in May, while the Crystal Creek and Cashmere Mountain populations are under several meters of snow and normally flower in July. Since the Crystal Creek and Cashmere Mountain populations are distinct from *Hackelia venusta,* they are not the subject of this proposed rule and will not be further discussed.

Preliminary isozyme analysis currently being conducted by the U.S. Forest Service indicates a clear separation between the Tumwater Canyon and high-elevation populations (Carol Aubry, U.S. Forest Service, pers. comm. 1998). This analysis measures the differences in plant proteins (usually an enzyme) and can be used to detect genetic differences among populations. Dr. Robert Carr, Professor of Botany, Eastern Washington University, attempted specific and intraspecific crosses with 18 species of North American *Hackelia* over a 3-year period but has yet to produce viable seed from these crosses in the greenhouse. Dr. Carr indicated that he has not attempted to cross the Tumwater Canyon and Crystal Creek/Cashmere Mountain populations, primarily because of the difficulty of growing *Hackelia* from seed in the greenhouse and the temporal differences in the two populations' flowering. Dr. Carr, an expert on the genus *Hackelia,* confirms that the Tumwater Canyon and high-elevation populations are two distinct taxa (R. Carr, pers. comm. 1998).

An occurrence of *Hackelia venusta* was originally found in 1948 in Merritt, Washington in Chelan County, but recent attempts to relocate the site have failed. Changes in land use do not support growth of this species in this area anymore. The current element occurrence records of the Washington Natural Heritage Program designate this site as historic.

In Tumwater Canyon, *Hackelia venusta* occurs primarily on unstable soils on steep rocky slopes and outcrops, though scattered individuals also occur along a State highway roadcut on Federal land. *Hackelia venusta* appears to be somewhat adapted to natural and possibly human-caused substrate disturbance. Although potential habitat for this species is widespread in Tumwater Canyon, the plant is scattered throughout an area of less than 1 hectare (ha) (2.5 acres (ac)). In 1968, the taxon appeared ''limited to a few hundred acres'' (Gentry and Carr 1976), and in 1981, the population was estimated to have 800 to 1,000 plants. In 1984, and again in 1987, fewer than 400 individuals were found over an area of approximately 5 ha (12 ac) (Gamon 1988a). Personal observations by Ted Thomas (U.S. Fish and Wildlife Service) (in cooperation with Richy Harrod, U.S. Forest Service, and Paul Wagner, Washington Department of Transportation (WDOT)) using an intensive search and count method on May 11, 1995, revealed less than 150 individuals growing on less than 1 ha (2.5 ac) of suitable habitat. According to Dr. Carr, the area occupied by *Hackelia venusta* is greatly reduced, and the number of individual plants has seriously declined since he first visited the Tumwater Canyon population in the early 1970s (R. Carr, pers. comm. 1996). Even though earlier counts were conducted by different workers using different techniques, the population size shows a clear downward trend.

The remaining known population is at risk of extirpation due to a variety of threats. From personal observation of the site, the suitable habitat for *Hackelia venusta* is threatened by plant succession in the absence of fire, and competition with nonnative, Washington State-listed noxious plants (Ted Thomas, pers. obs. 1998; Washington Administrative Code 17.10, Ch. 16–750). Other threats include the mass-wasting or erosion of soil on these unstable slopes and highway maintenance activities. The species occurs in the road right-of-way (ROW), which is Federal land, but the ROW is maintained by WDOT. In the past, road salting and herbicide spraying were probable factors in reducing the vigor of *Hackelia venusta.* Currently, WDOT maintenance crews rarely apply road salt and, when they do, they apply it at a 20:1 ratio with road sand (Luther Beaty, WDOT, pers. comm. 1996). Herbicides have been applied in the past and may have contributed to the reduced number of plants in the population. WDOT has discontinued the use of herbicides in Tumwater Canyon (L. Beaty, pers. comm. 1996). In the narrow confines of Tumwater Canyon, automobile emissions may continue to be a cause for reduced vigor to the *Hackelia venusta* population because ozone and oxides of sulphur and nitrate emitted from vehicle tailpipes negatively affect photosynthesis of the plants. In addition, several individual plants occur on level ground at the roadside turnoff and are threatened with trampling and collecting.

Previous Federal Action

Federal action on this species began when we published a Notice of Review in the **Federal Register** for plants on

December 15, 1980 (45 FR 82480). In this notice, *Hackelia venusta* was included as a category 1 candidate species. Category 1 candidates were those species for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals, but for which listing proposals had not been prepared due to other higher priority listing actions. The plant notice of review was revised on September 27, 1985 (50 FR 39525); in that notice *Hackelia venusta* was included as a category 2 candidate. At that time, a category 2 species was one that was being considered for possible addition to the Federal Lists of Endangered and Threatened Wildlife and Plants but for which conclusive data on biological vulnerability and threats were not available to support a proposed rule. Pending completion of updated status surveys, the status was changed to category 1 in the February 21, 1990 (55 FR 6183), Notice of Review. In the September 30, 1993, Notice of Review (58 FR 51144), *Hackelia venusta* remained a category 1 candidate. In the February 28, 1996, Notice of Review (61 FR 7596), *Hackelia venusta* was removed from the candidate list due to questions regarding the species' taxonomic status. Also, beginning with the 1996 Notice of Review, we discontinued the use of multiple categories of candidates, and only those taxa meeting the definition of former category 1 are now considered candidates. A status review was completed in June 1997 to reflect new information regarding the taxonomy of the species. The status review recognized *Hackelia venusta* as a valid taxon of which only a single population was extant.

The processing of this proposed rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. The processing of this proposed rule is a Priority 2 action.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. The Service may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hackelia venusta* (showy stickseed) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The range of *Hackelia venusta* has been reduced to a scattered distribution occupying less than 1 ha (2.5 ac) in the Tumwater Canyon; this restricted population consists of less than 150 individuals and constitutes the sole population of *Hackelia venusta.*

The primary loss of habitat for *Hackelia venusta* has resulted from changes in habitat due to plant succession in the absence of fire. Fire suppression has been a factor in reducing the extent of the Tumwater Canyon population and in the apparent loss of the Merritt population (Gamon 1988a; Gamon 1988b). Wildfires play a role in maintaining open, sparsely vegetated sites as suitable habitat for *Hackelia venusta,* as the plant appears to be shade-intolerant (R. Carr, pers. comm. 1998). The species prefers habitat that has been burned, have little competing vegetation, and have little soil-organic matter (R. Carr, pers. comm. 1998). The species has been seen in canopy openings created by a wildfire in 1994 where they were not previously found (T. Thomas, pers. obs. 1998). These plants are within 50 m (165 ft) of the original population and are probably offspring of the existing population. Seeds were likely carried to the open substrate by wind, and germination was likely aided by the increase in light and moisture within the canopy gap.

Two nonnative, Washington State-listed noxious weeds (Ch 16, WAC 1997) occur within the habitat of *Hackelia venusta* within Tumwater Canyon. *Linaria dalmatica* (dalmatian toadflax) and *Centaurea diffusa* (diffuse knapweed) are present along the roadside, have increased in numbers and distribution, and have encroached into the population of *Hackelia venusta.* Each of these species has the ability to outcompete and replace native vegetation and are a threat to *Hackelia venusta* (Jane Wentworth, Washington Department of Natural Resources, pers. comm. 1998). During visits to the population site in 1995, 1996, and 1997, Ted Thomas (pers. obs. 1995, 1996, and 1997) noted that the cover and distribution of the noxious weeds had increased over time. Without intervention, these species have the ability to completely outcompete *Hackelia venusta* and dominate the area.

Highway maintenance activities are an ongoing threat. The highway is sanded during winter months, and occasionally a mixture of sand and salt is applied, affecting the immediate roadside habitat where *Hackelia venusta* is found. Highway maintenance activities involving the clearing of landslide material from the highway right-of-way resulted in the destruction of 20 to 30 *Hackelia venusta* individuals several years ago (R. Harrod, pers. comm. 1997). Although the roadsides have not been sprayed with herbicides in recent years, spraying did occur for a considerable period of time prior to 1980. The residual effect of herbicide spraying on *Hackelia venusta* is unknown. Some herbicides are known to be resident in the soil for long periods of time, affecting the plants that persist there.

Erosional landslides of the unstable slope where the population is located are also a threat to the species. The steepness of the slope exceeds 100 percent (45 degree) inclination in some places, and the slope's instability constitutes a significant threat as a major landslide could bury the population (Gamon 1997). The potential for slumping has increased since 1994, when fires burned through the forest directly adjacent to the *Hackelia venusta* population. Water uptake by trees and other vegetation that were killed by the 1994 fire has decreased, and as tree roots begin to decompose, their binding action in the soil will also decrease. This factor increases the potential for slumping and destruction of the site and population.

Although there are no data regarding the effects of automobile emissions on this species, such emissions should be considered a threat, given the proximity of the road to the population. The highway is heavily used, with 3,900 to 5,200 automobiles traveling daily through Tumwater Canyon, which is very narrow (WDOT 1996). According to population projections, 100,000 people will move into the State of Washington

each year. Trends for Chelan County indicate an increase from the current human population of 52,250 (1995) to more than 86,000 people in the year 2020, a 39 percent increase (Washington Office of Financial Management 1995). A larger human population will increase the demands for recreational activities and bring more people to central Washington. Automobile emissions are likely to increase along this heavily traveled corridor. These emissions, containing ozone and sulphur and nitrate oxides, negatively affect photosynthesis of coniferous and herbaceous plants.

B. Overutilization for Commercial, Scientific, or Educational Purposes

Wildflower collecting does pose a threat, and future collecting could increase, especially if the site becomes known to the general public. The Tumwater Canyon population is accessible to the public because it is located near a highway with a turnout directly across the road. Amateur and professional botanists know of the location of the population; their collecting activities may affect the species (Gamon 1997).

Representatives from the Service, the Forest Service, and Eastern Washington University witnessed an instance of a person collecting the plant as they inspected the *Hackelia venusta* site (T. Thomas, pers. obs. 1998). That episode indicates that the species, when in bloom, is eye-catching and sufficiently attractive to cause someone to stop and remove the plant, presumably for personal use. Not only does the removal of plants cause a loss of reproductive potential, but trampling the site to access the plants could have a devastating effect on the remaining plants.

C. Disease or Predation

Disease is not currently known to be a threat to this species. No livestock or wildlife are known to graze on *Hackelia venusta.*

D. Inadequacy of Existing Regulatory Mechanisms

Although the known population of *Hackelia venusta* is located in an area designated as a special management area, the species remains vulnerable to threats. The Tumwater Canyon Botanical Area was designated by the Wenatchee National Forest in 1938 because of the occurrence of *Lewisia tweedyi. Lewisia tweedyi* has since been found to be more widespread than previously known and is no longer a species of concern for the area. The Wenatchee National Forest has maintained the Botanical Area designation because of the presence of *Hackelia venusta* and *Silene seelyi,* a potential candidate. *Silene seelyi* grows in rock outcrop crevices near where *Hackelia venusta* is located, but it does not occupy the talus habitat that *Hackelia venusta* does. Management activities in the Botanical Area should emphasize botanical values (Terry Lillybridge, Wenatchee National Forest, pers. comm. 1998); however, there is no specific, completed management guide for *Hackelia venusta* or *Silene seelyi.* This Botanical Area is also managed as part of a designated late-successional reserve under the Northwest Forest Plan, which permits some silvicultural and fire hazard reduction treatments. The populations of both species are listed on the U.S. Forest Service Regional Forester's Sensitive Species List. The Forest Service is required to maintain or enhance the viability of species on this list by considering the species in their project biological evaluations and mitigate actions that adversely impact the species. The Forest Service prohibits the collection of native plants without a permit.

The Washington Natural Heritage Program developed management guidelines for *Hackelia venusta* in 1988 (Gamon 1988b), with recommendations that certain actions be taken to protect the plant on National Forest land. These guidelines included the recommendation that managers of the Wenatchee National Forest develop a Species Management Guide to provide management direction for the habitat of this species. The Wenatchee National Forest developed a draft management guide several years ago, but has not yet finalized it (T. Lillybridge, pers. comm. 1997). The Washington Department of Natural Resources designated *Hackelia venusta* as endangered in 1982, and the species designation was retained in subsequent updates of the State's endangered species list. The State of Washington does not have a State Endangered Species Act and therefore, has no law that provides protection for *Hackelia venusta* or other species designated as endangered or threatened.

Status survey reports document a declining population of *Hackelia venusta* that will continue to decline unless conservation efforts are implemented (Barrett *et al.* 1985; Gamon 1997). At present, there is no management of the habitat where *Hackelia venusta* occurs. The recent survey conducted by Ted Thomas (U.S. Fish and Wildlife Service), Richy Harrod (U.S. Forest Service), and Paul Wagner (WDOT) in May 1995 further supports the observed decline in the population and that the species is at risk of extinction if protection and recovery efforts are not implemented.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Low seed production, as well as low genetic variation, are factors in the decline of *Hackelia venusta.* At the Tumwater Canyon site, an estimated high proportion (60 to 70 percent) of *Hackelia venusta* seeds did not develop in 1984 (Barrett *et al.* 1985). Fruit development was poor on many plants; only a few individuals exhibited mature fruit development. It is unknown why this occurred, but low genetic variation may have contributed to poor reproduction success. This reduced reproductive potential may be a major factor in the reduction of plants at the type locality and the extirpation of the historic Merritt population. The age structure of the extant population at Tumwater Canyon, poor seed output, and historical estimates of population size indicate that the population is declining (Barrett *et al.* 1985; Gamon 1997).

The small size of the *Hackelia venusta* population is a major problem. Seedling establishment is most critical, and trampling may significantly affect seedlings occurring on flat ground near the road (R. Carr, pers. comm. 1998). Human activities along the roadside turnout at the Tumwater Canyon site represent a significant threat to plants nearest the turnout. Motorists use the area to view the Wenatchee River, often venturing over the guardrail and along the bank below the road. Plants on this bank are damaged by trampling, burial by loose rock, and root exposure as a result of human traffic on the unstable slopes (Gamon 1997).

Fire suppression during this century is likely a factor in the reduced extent of the Tumwater Canyon population and may have also contributed to the extirpation of the historic Merritt population. Historically, fuels in the forest type where *Hackelia venusta* is found were rarely at high levels because of the frequent fires that consumed forest floor fuels and pruned residual trees (Agee 1991). In the past, fires suppressed the encroachment of woody vegetation and maintained open areas more conducive to *Hackelia venusta* reproduction and growth. Continued suppression of fires in this forest type could bring about additional habitat loss (Barrett *et al.* 1985; Gamon 1997).

Competition from *Linaria dalmatica* (dalmatian toadflax) and *Centaurea diffusa* (diffuse knapweed) is a threat to *Hackelia venusta.* Both of these noxious weeds outcompete many native plant

species through uptake of water and nutrients, interference with photosynthesis and respiration of associated species, and production of compounds that can directly affect seed germination and seedling growth and development. These noxious plants co-occur with *Hackelia venusta* at the Tumwater Canyon site and have become more widespread on the available habitat.

The small number of individuals (less than 150 plants) remaining in the sole population located in Tumwater Canyon makes *Hackelia venusta* vulnerable to extinction due to random events such as slope failure (mass-wasting) or drought. A single random environmental event could extirpate a substantial portion or all of the remaining individuals of this species and cause its extinction. Also, changes in gene frequencies within small, isolated populations can lead to a loss of genetic variability and a reduced likelihood of long-term viability (Franklin 1980; Soule 1980; Lande and Barrowclough 1987).

We have carefully assessed the best scientific and commercial information available concerning the past, present, and future threats as well as the decline faced by this species in developing this proposed rule. Currently, only one known population of *Hackelia venusta* exists. Habitat modification associated with fire suppression, competition and shade from native shrubs and trees and nonnative noxious weeds, maintenance of the highway located near the population, poor seed development, low reproductive capacity, human collection, and incidental loss from human trampling, threaten the continued existence of this species. Also, the single, small population of this species is particularly susceptible to extinction from random environmental events. Because of the high potential for these threats to cause extinction of the species, the preferred course of action is to list *Hackelia venusta* as endangered.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act.

We propose that critical habitat is prudent for *Hackelia venusta.* In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that designation of critical habitat would be prudent for *Hackelia venusta.*

Due to the small number of populations, *Hackelia venusta* is vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time we do not have specific evidence for *Hackelia venusta* of vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we propose that critical habitat is prudent for *Hackelia venusta.* However, the deferral of the critical habitat designation for *Hackelia venusta* will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of *Hackelia venusta* without further delay. We anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for

this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will make the final critical habitat determination with the final listing determination for *Hackelia venusta*. If this final critical habitat determination is that critical habitat is prudent, we will develop a proposal to designate critical habitat for *Hackelia venusta* as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that the Service carry out recovery actions for all listed species. Together with our partners, we would initiate such actions following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this Interagency Cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat, if any has been designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agencies, whose proposed actions may require conference and/or consultation as described in the preceding paragraph, include the Forest Service, Federal Highway Administration, and U.S. Army Corps of Engineers (Corps). State highway activity implemented by the State and partly funded by the Federal government, that may include highway maintenance activities, such as roadside vegetation control, may be subject to consultation under the Act. U.S. Forest Service activities that may require consultation under section 7 of the Act would include fire suppression, activities associated with fire suppression, timber harvest and habitat restoration activities. The Corps may be required to confer or consult with us on proposed actions planned on the Wenatchee River, which is adjacent and directly below the highway ROW. The distance from the base of the *Hackelia venusta* population and the Wenatchee River is less than 30 m (100 ft).

WDOT has proposed removing a large, dead tree and several live trees, as well as unstable, large boulders that pose a safety hazard to the highway and are adjacent to the *Hackelia venusta* population (P. Wagner, pers. comm. 1996). Tree removal may benefit the species by reducing shade from overstory trees, as well as reducing conifer seed production and establishment of conifer seedlings. However, if the large trees are felled and fall downslope onto the *Hackelia venusta* population, and then cabled down to the road, severe adverse effects on the population could result. To avoid such a situation, we are working with the Forest Service and WDOT to develop management guidelines to protect the population, such as falling the trees upslope and removing them from the site with a helicopter. The Forest Service is preparing the National Environmental Policy Act documents to analyze the action and may implement the project in the fall of 1999.

Listing of this plant would authorize development of a recovery plan for the plant. Such a plan would identify both State and Federal efforts for conservation of the plant and establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and describe site-specific management actions necessary to achieve conservation and survival of the plant. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to the State of Washington for management actions promoting the protection and recovery of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction in areas under Federal jurisdiction and the removal, cutting, digging up, damaging, or destroying of such endangered plants in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

Per our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), at the time a species is listed we identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range.

Based upon the best available information, we believe that the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, and pipeline or utility line construction crossing suitable habitat), when such activity is conducted in accordance with any reasonable and prudent measures given by the Service

in a consultation conducted under section 7 of the Act;

(2) Casual, dispersed human activities on foot or horseback (e.g., bird watching, sightseeing, photography, camping, hiking);

(3) Activities on private lands that do not require Federal authorization and do not involve Federal funding, such as grazing management, agricultural conversions, flood and erosion control, residential development, road construction, and pesticide/herbicide application when consistent with label restrictions;

(4) Residential landscape maintenance, including the clearing of vegetation around one's personal residence as a fire break.

The Service believes that the following might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands;

(2) Application of pesticides/herbicides in violation of label restrictions;

(3) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit.

(4) The removal or destruction of the species on non-Federal land when conducted in knowing violation of Washington State law or regulations, or in the course of any violation of a State criminal trespass law.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Questions regarding whether specific activities will constitute a violation of section 9 should be addressed to the Manager of the Western Washington Office (see **ADDRESSES** section).

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Hackelia venusta*;

(2) The location of any additional populations of *Hackelia venusta* and the reasons why any habitat of this species should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Hackelia venusta*.

In making a final decision on this proposal, we will take into consideration the comments and any additional information we receive. Such communications may lead to a final regulation that differs from this proposal.

National Environmental Policy Act

We have determined that an Environmental Assessment and Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

We have examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

Paperwork Reduction Act

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. For additional information concerning permits and associated requirements for endangered plants, see 50 CFR 17.62 and 17.63.

References Cited

You may request a complete list of all references cited in this document, as well as others, from our Western Washington Office (see **ADDRESSES** section).

Author: The primary author of this proposed rule is Ted Thomas, Western Washington Office of the North Pacific Coast Ecoregion (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend Part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants.

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Hackelia venusta	Showy stickseed	U.S.A. (WA)	Boraginaceae-borage.	E	686	NA	NA
*	*	*	*	*	*	*	

Dated: December 22, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–3403 Filed 2–11–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D. 081699C, 092199A, 092799G]

Endangered and Threatened Species; Extension of Comment Periods and Notice of Additional Public Hearings for Proposed Rules Governing Take of West Coast Chinook, Chum, Coho and Sockeye Salmon and Steelhead Trout

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; extension of public comment periods; notification of public hearings.

SUMMARY: NMFS is extending the public comment periods and announcing additional public hearings for the following: Proposed Rule Governing Take of Seven Threatened Evolutionarily Significant Units (ESUs) of West Coast Salmonids; Proposed Rule Governing Take of Threatened Snake River, Central California Coast, South/Central California Coast, Lower Columbia River, Central Valley California, Middle Columbia River, and Upper Willamette River Evolutionarily Significant Units (ESUs) of West Coast Steelhead; and Limitation on Section 9 Protections Applicable to Salmon Listed as Threatened under the Endangered Species Act (ESA), for Actions Under Tribal Resource Management Plans. NMFS is extending the comment periods and holding additional public hearings for all three rules to avoid confusion and facilitate public participation in this regulatory process.

DATES: Written comments on the previously mentioned proposed rules must be received no later than 5 p.m. Pacific standard time, on March 6, 2000. See **SUPPLEMENTARY INFORMATION** for hearing dates.

ADDRESSES: Written comments on the proposed rules and requests for reference materials should be sent to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments will not be accepted if submitted via e-mail or the Internet. See **SUPPLEMENTARY INFORMATION** for hearing addresses.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, (503) 231–2005; Craig Wingert, (562) 980–4021; or Chris Mobley, (301) 713–1401. Copies of the **Federal Register** documents cited herein and additional salmon-related materials are available via the Internet at www.nwr.noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Under section 4(d) of the Endangered Species Act (ESA), the Secretary of Commerce (Secretary) is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. On December 30, 1999 (64 FR 73479), NMFS issued a proposed rule under section 4(d) of the ESA which contains the regulations that, it believes, are necessary and advisable to conserve threatened Snake River, Central California Coast, South/Central California Coast, Lower Columbia River, Central Valley California, Middle Columbia River, and Upper Willamette River ESUs of West Coast Steelhead. The proposed rule applies ESA section 9(a)(1) prohibitions to the previously mentioned steelhead ESUs, but proposes not to apply the take prohibitions to 13 specific programs which limit impacts on listed steelhead to an extent that makes added protection through Federal regulation not necessary and advisable for the conservation of these ESUs (see 64 FR 73479).

On January 3, 2000 (65 FR 170), NMFS issued a proposed rule under section 4(d) of the ESA which was nearly identical to the December 30, 1999, proposal except that it applied to the following species of salmon: Oregon Coast Coho, Puget Sound, Lower Columbia and Upper Willamette Chinook, Hood Canal Summer-run and Columbia River Chum, and Ozette Lake Sockeye.

Also on January 3, 2000 65 FR 108), NMFS issued a proposed rule under section 4(d) of the ESA that would not impose the section 9(a)(1) prohibitions on take when impacts on threatened salmonids result from implementation of a tribal resource management plan, where the Secretary has determined that implementing that Tribal Plan will not appreciably reduce the likelihood of survival and recovery for the listed species. This proposal applies to threatened salmonids that are currently subject to ESA section 9(a)(1) take prohibitions: Snake River spring/summer chinook salmon; Snake River fall chinook salmon; Central California Coast (CCC) coho salmon; and Southern Oregon/Northern California Coast (SONCC) coho salmon. This proposed limitation on take prohibitions would also be available for all other threatened salmonid ESUs whenever final ESA section 9(a) are made applicable to that ESU.

NMFS has received a number of requests for additional public hearings to allow further opportunity for the public to participate in the exchange of information and opinion among interested parties and to provide oral and written testimony. NMFS finds that two of these requests are reasonable and has scheduled additional meetings accordingly.

Because these closely related rules have public comment periods that end on different dates (February 22, 2000, and March 3, 2000, for the steelhead proposal and for the other 2 proposals, respectively), NMFS is extending the comment period for all three rules to avoid confusion and facilitate public participation in this regulatory process.

NMFS is soliciting specific information, comments, data, and/or recommendations on any aspect of the December 30, 1999, and January 3, 2000, proposals from all interested parties. This information is considered critical in helping NMFS make final determinations on the proposals. NMFS will consider all information, comments, and recommendations received during the comment period and at the public hearings before reaching a final decision.

Public Hearings

Additional public hearings have been scheduled as follows:

(1) February 17, 2000, 6:00–9:00 p.m., Idaho State University, Wood River Dining Room, 1065 S. 8th Street, Pocatello, Idaho; and

(2) February 22, 2000, 6:00–9:00 p.m., Cowlitz County Administration

Building, General Meeting Room, 207 4th Avenue N., Kelso, Washington.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language or other aids should be directed to Garth Griffin (see **ADDRESSES**) 7 days before each meeting date.

Dated: February 7, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–3288 Filed 2–11–00; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 65, No. 30
Monday, February 14, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service in Kentucky

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Kentucky

AGENCY: Natural Resources Conservation Service (NRCS) in Kentucky, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Kentucky for review and comment.

SUMMARY: It is the intention of the NRCS in Kentucky to issue revised conservation practice standards: Dike (Code 356), Diversion (Code 362), Forage Harvest Management (Code 511), Irrigation Water Conveyance, Pipeline: Aluminum Tubing (Code 430AA), High-Pressure Underground Plastic (Code 430BB), Low-Pressure Underground Plastic (Code 430EE), Steel (Code 430FF), Pond Sealing or Lining: Flexible Membrane (Code 521A), Soil Dispersant (Code 521B), Bentonite (Code 521C), Cationic Emulsion-Waterborne Sealant (Code 521D), Asphalt Sealed Fabric Liner (Code 521E), Shallow Water Management For Wildlife (Code 646), Streambank & Shoreline Protection (Code 580), Structure for Water Control (Code 587), Subsurface Drain (Code 606), Underground Outlet (Code 620), and Waste Storage Facility (Code 313).

DATE: Comments will be received on or before March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to David G. Sawyer, State Conservationist, Natural Resources Conservation Service (NRCS), 771 Corporate Drive, Suite 110, Lexington, KY 40503–5479. Copies of the practice standards are made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Kentucky will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Kentucky regarding deposition of those comments and a final determination of change will be made.

Dated: February 2, 2000.

David G. Sawyer,

State Conservationist, Natural Resources Conservation Service Lexington, KY.

[FR Doc. 00–3244 Filed 2–11–00; 8:45 am]

BILLING CODE 3410–16–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: February 16, 2000; 8 a.m.–11:30 a.m.

PLACE: Doral Golf Resort & Spa, Conference Room, 4400 NW 87th Avenue, Miami, FL 33178.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: February 9, 2000.

John A. Lindburg,

Legal Counsel and Acting Executive Director.

[FR Doc. 00–3480 Filed 2–14–00; 1:14 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review: Not later than the last day of February 2000, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following period:

	Period
Antidumping Duty Proceedings:	
AUSTRIA: Railway Track Maintenance Equipment, A–433–064	2/1/99–12/31/99
BRAZIL: Stainless Steel Bar, A–351–825	2/1/99–1/31/00
CANADA: Racing Plates, A–122–050	2/1/99–12/31/99
GERMANY: Sodium Thiosulfate, A–428–807	2/1/99–1/31/00
INDIA: Forged Stainless Steel Flanges, A–533–809	2/1/99–1/31/00
INDIA: Stainless Steel Bar, A–533–810	2/1/99–1/31/00
INDIA: Certain Preserved Mushrooms, A–533–813	8/5/98–1/31/00
INDONESIA: Certain Preserved Mushrooms, A–560–802	8/5/98–1/31/00
INDONESIA: Melamine Institutional Dinnerware, A–560–801	2/1/99–1/31/00
JAPAN: Benzyl Paraben, A–588–816	2/1/99–12/31/00
JAPAN: Butt-Weld Pipe Fittings, A–588–602	2/1/99–1/31/00
JAPAN: Mechanical Transfer Presses, A–588–810	2/1/99–1/31/00
JAPAN: Melamine, A–588–056	2/1/99–1/31/00
JAPAN: Stainless Steel Bar, A–588–833	2/1/99–1/31/00
REPUBLIC OF KOREA: Business Telephone Systems, A–580–803	2/1/99–1/31/00
REPUBLIC OF KOREA: Stainless Steel Butt-Weld Pipe Fittings, A–580–813	2/1/99–1/31/00
TAIWAN: Forged Stainless Steel Flanges, A–583–821	2/1/99–1/31/00
THE PEOPLE'S REPUBLIC OF CHINA: Axes/adzes, A–570–803	2/1/99–1/31/00
THE PEOPLE'S REPUBLIC OF CHINA: Bars/wedges, A–570–803	2/1/99–1/31/00
THE PEOPLE'S REPUBLIC OF CHINA: Certain Preserved Mushrooms, A–570–851	8/5/98–1/31/00
THE PEOPLE'S REPUBLIC OF CHINA: Coumarin, A–570–830	2/1/99–1/31/00
THE PEOPLE'S REPUBLIC OF CHINA: Hammers/sledges, A–570–803	2/1/99–1/31/00
THE PEOPLE'S REPUBLIC OF CHINA: Manganese Metal, A–570–840	2/1/99–1/31/00
THE PEOPLE'S REPUBLIC OF CHINA: Melamine Institutional Dinnerware, A–570–844	2/1/99–1/31/00
THE PEOPLE'S REPUBLIC OF CHINA: Paint Brushes, A–570–501	2/1/99–1/31/00
THE PEOPLE'S REPUBLIC OF CHINA: Picks/mattocks, A–570–803	2/1/99–1/31/00
THE PEOPLE'S REPUBLIC OF CHINA: Sodium Thiosulfate, A–570–805	2/1/99–1/31/00
THE UNITED KINGDOM: Sodium Thiosulfate, A–412–805	2/1/99–1/31/00
Countervailing Duty Proceedings: None.	
Suspension Agreements:	
BRAZIL: Frozen Concentrated Orange Juice, C–351–005	2/1/99–1/31/00
VENEZUELA: Cement, A–307–803	2/1/99–1/31/00

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. In recent revisions to this regulations, the Department changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27424 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of February 1998. If the Department does not receive, by the last day of February 1998, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimate antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit it previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 9, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration (Group II).

[FR Doc. 00–3393 Filed 2–11–00; 8:45 am]

BILLING CODE 3510–05–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 9, 1999, the Department of Commerce (the

Department) published the preliminary results and a partial rescission of its administrative review of the antidumping duty order on certain pasta from Italy. This review covers shipments by seven respondents during the period of review July 1, 1997, through June 30, 1998.

For our final results, we have found that, for certain respondents, sales of the subject merchandise have been made below normal value (NV). We will instruct the United States Customs Service to assess antidumping duties equal to the difference between the export price (EP) or constructed export price (CEP) and the NV.

EFFECTIVE DATE: February 14, 2000.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Jarrod Goldfeder, Office of AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4126 or (202) 482–2305, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (April 1999).

Case History

This review covers the following manufacturers/exporters of merchandise subject to the antidumping duty order on certain pasta from Italy: (1) Commercio-Rappresentanze-Export S.r.l. (Corex); (2) F.lli De Cecco di Filippo Fara S. Martino S.p.A. (De Cecco); (3) La Molisana Industrie Alimentari S.p.A. (La Molisana); (4) N. Puglisi & F. Industria Paste Alimentari S.p.A. (Puglisi); (5) Pastificio Antonio Pallante (Pallante); (6) Pastificio Maltagliati S.p.A. (Maltagliati); and (7) Rummo S.p.A. Molino e Pastificio (Rummo).

On August 9, 1999, the Department published the preliminary results of this review. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Italy,* 64 FR 43152 (*Preliminary Results*). As noted in the *Preliminary Results,* we rescinded this review with respect to F. Divella Molina e Pastificio, Pastificio Fabianelli S.p.A., Industria Alimentari Colavita S.p.A., and Riscossa F.lli Mastromauro S.r.l., because each of these companies timely filed letters with the Department withdrawing the requests for reviews and because there were no other requests for reviews of these companies. On September 15, 1999,[1] we received case briefs from: (1) Borden, Inc., New World Pasta, Inc., and Gooch Foods, Inc. (collectively, the petitioners), and (2) four of the manufacturers/exporters that participated in this review (De Cecco, La Molisana, Maltagliati, and Rummo). We received rebuttal briefs from the petitioners, De Cecco, and Maltagliati on September 22, 1999. A public hearing was not held with respect to this review.[2]

On November 30, 1999, the Department extended the time limits for completion of the final results of this review by 60 days. *See Certain Pasta from Italy: Extension of Final Results of Antidumping Duty Administrative Review,* 64 FR 68320 (December 7, 1999). We issued supplemental questionnaires to and received responses from De Cecco in December 1999.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione (IMC), by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia or by Consorzio per il Controllo dei Prodotti Biologici.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTSUS).* Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, on file in the Central Records Unit (CRU) of the main Commerce Building, Room B–099.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, on file in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation against Barilla, an Italian producer and exporter of pasta. On October 5, 1998, the Department issued its final determination that, pursuant to section 781(a) of the Act, circumvention of the antidumping duty order is occurring by reason of exports of bulk pasta from Italy produced by Barilla which subsequently are repackaged in the United States into packages of five pounds or less for sale in the United States. *See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 63 FR 54672 (October 13, 1998).

[1] On September 21, 1999, we rejected the case briefs submitted by the petitioners and Maltagliati, pursuant to section 351.301(b)(2) of the Department's regulations, because we found that the briefs contained untimely new factual information. These case briefs were resubmitted on September 21, 1999, without the new information. Furthermore, on October 12, 1999, we rejected La Molisana's case brief, pursuant to section 351.301(c)(2) of the Department's regulations, because La Molisana submitted information requested by the Department after the deadline specified in a February 22, 1999 request. La Molisana resubmitted its case brief without the new information on October 14, 1999.

[2] Although Maltagliati requested a hearing on August 26, 1999, that request was subsequently withdrawn on September 7, 1999.

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the antidumping and countervailing duty orders. On May 24, 1999 we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, on file in the CRU.

Price Comparisons

We calculated EP, CEP, and NV based on the same methodology described in the *Preliminary Results,* with the following exceptions:

De Cecco

We changed the negative discount values in De Cecco's U.S. sales database to positive values. *See Comment 8*.

We corrected two clerical errors in the calculation of CEP profit. *See Comment 9*.

We revised the calculation of indirect selling expenses incurred in the United States by De Cecco's U.S. affiliate, Prodotti Mediterranei, Inc. (PMI). *See* Analysis Memorandum for F.lli De Cecco di Filippo Fara S. Martino S.p.A. for the Final Results of the Second Administrative Review on *Certain Pasta from Italy,* February 7, 2000, on file in the CRU.

Maltagliati

We deducted billing adjustments from the home market gross price prior to recalculating imputed credit expenses. *See Comment 14*.

Rummo

We corrected certain clerical errors in the calculation of CEP profit. *See Comment 19*.

We revised U.S. movement expenses by recalculating warehousing expenses as a weighted average expense for all warehouses. *See Comment 20*.

Cost of Production

As discussed in the *Preliminary Results,* we conducted an investigation to determine whether each of the seven respondents participating in the review made home market sales of the foreign like product during the period of review (POR) at prices below their cost of production (COP) within the meaning of section 773(b)(1) of the Act.

For all respondents, we found 20 percent or more of the sales of a given product during the 12 month period were at prices less than the weighted-average COP for the POR. Therefore, we determined that these below-cost sales were made in ''substantial quantities'' within an extended period of time, and that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(B), (C), and (D) of the Act. Therefore, for purposes of these final results, we disregarded these below-cost sales and used the remaining sales as the basis for determining NV, pursuant to section 773(b)(1) of the Act.

We calculated the COP for these final results following the same methodology as in the *Preliminary Results,* with the following exceptions:

De Cecco

We revised the variable cost of manufacture (VCOM) and total cost of manufacture (TCOM) components of De Cecco's COP and constructed value (CV) data in light of our reliance upon the major input rule. *See Comment 3.*

La Molisana

We revised the submitted COP and CV data to exclude costs of purchased pasta, where the supplier from whom the pasta was purchased could be identified. *See Comment 10.*

We removed the costs of purchased pasta from the variable material costs, such that La Molisana's DIFMER calculation was based on La Molisana's actual costs of producing pasta. *See Comment 11.*

Maltagliati

We revised the general and administrative (G&A) expense included in CV by multiplying the G&A expense ratio by the revised cost of manufacturing plus packing. *See Comment 17.*

We revised the interest expense ratio included in COP and CV by multiplying the short-term interest rate by the revised cost of manufacturing plus packing. *See Comment 18.*

Analysis of Comments Received

We gave interested parties an opportunity to comment on the Preliminary Results. As noted above, we received comments and/or rebuttal comments from the petitioners and certain respondents.

De Cecco

Comment 1: Application of CEP and Commission Offsets

De Cecco claims that the Department, through the erroneous application of an offset, overstated NV. According to De Cecco, when a CEP offset is granted and commissions are paid in the home market but not in the United States, the Department reduces NV by the amount of the home market commission and by the CEP offset, which is equal to the lesser of the home market commission or indirect selling expenses incurred in the United States. De Cecco acknowledges that the CEP offset was correctly calculated and applied. De Cecco contends, however, that the Department incorrectly increased NV with a second offset, which was calculated as the lesser of home market commissions or U.S. indirect selling expenses incurred in Italy.

The petitioners allege that the Department incorrectly capped the home market commission offset for De Cecco's CEP sales by the amount of the U.S. indirect selling expenses incurred in Italy. As a result, the Department allowed a greater deduction from NV (*i.e.,* the subtraction of home market commissions), but a much smaller addition to the NV was made to offset the deduction. The petitioners, noting that De Cecco paid commissions on its home market sales but not on its U.S. sales, argue that the Department should have calculated the commission offset as the lesser amount of the home market commissions or the *entire amount* of U.S. indirect selling expenses for all of De Cecco's U.S. sales. Citing section 351.401(e) of the Department's regulations, which provides that the Department will limit the amount of the commission offset by the amount of indirect selling expenses incurred in the ''one market,'' the petitioners contend that the Department's segregation of De Cecco's U.S. indirect selling expenses on the basis of geographical areas (*i.e.,* the United States and Italy) was inappropriate. The appropriate basis for segregating such expenses under the Department's regulations, the petitioners continue, is whether those indirect selling expenses were incurred for sales in the ''one market'' where commissions were not paid, not where those expenses were incurred. Furthermore, the petitioners cite past cases where the Department used the total amount of U.S. indirect selling expenses, rather than the limited amount of such expenses incurred in the respondent's home market, in its calculations for a home market commission offset.

DOC Position: We disagree with the petitioners and De Cecco. First, we disagree with the petitioners' argument that the commission offset should not be capped by the amount of indirect expenses attributable to De Cecco's CEP sales but incurred in Italy. The amount of De Ceccos's indirect selling expenses

attributable to U.S. sales and associated with economic activities incurred in the United States are deducted from the CEP starting price under section 772(d) of the Act. Consequently, in order to avoid deducting the same indirect expenses twice, we must exclude from the commission offset calculation those indirect expenses associated with economic activities in the United States, which are already deducted in the calculation of the CEP.

Second, we disagree with De Cecco's argument, and believe that it may reflect De Cecco's misunderstanding of our prior explanation of the various adjustments to home market prices for indirect selling expenses. In accordance with section 351.410(e) of the Department's regulations, where commissions are incurred in one market (in this case the home market), but not in the other, we make an allowance for indirect selling expenses in the other market up to the amount of the commissions. In this case, because commissions were paid in the home market, but not in the United States, and thus were deducted from the home market price, we made an adjustment to offset the commission deduction. We make such an adjustment, which falls under the heading of a circumstance-of-sale adjustment, by adding the offset to home market price rather than subtracting it from the U.S. price. Thus, the overall adjustment to NV involves deducting home market commissions and then adding U.S. indirect selling expenses up to the amount of the home market commissions. As noted above, in CEP situations, the amount of U.S. indirect selling expenses available for purposes of the commission offset is limited by the extent to which such indirect selling expenses were incurred in the home market for U.S. sales.

Comment 2: Major Inputs

De Cecco argues that the Department should not use transfer prices to value transactions between De Cecco and Molino F.lli De Cecco di Filippo S.p.A. (Molino), its affiliated supplier of semolina, the major input of pasta. Instead, De Cecco claims that, for purposes of computing COP and CV, the Department should value transfers of semolina from Molino to De Cecco at Molino's cost.

De Cecco argues that the corporate entity Molino, 97.9 percent of which is owned by De Cecco and the remainder by shareholders of De Cecco's parent company, is in essence a wholly owned subsidiary of De Cecco. Although Molino is incorporated separately from De Cecco, Molino's semolina production and De Cecco's pasta-manufacturing operation are part of a single integrated production process under the same ownership. De Cecco states that Molino's sole function is to process grain, selected by De Cecco, into semolina. The semolina is then transferred to De Cecco, which consumes all of Molino's semolina production, at a transfer price above Molino's COP. Therefore, De Cecco contends that the Department should value transfers of semolina from Molino to De Cecco at Molino's cost in order to reflect the economic and operational reality of the relationship and transactions between these two companies.

Noting that the Department ''collapsed'' De Cecco and Molino e Pastificio F.lli De Cecco S.p.A. (Pescara), another affiliated supplier of semolina and a pasta producer, De Cecco argues that Molino should be granted the same treatment since, as a provider of semolina to De Cecco, Molino is no different than Pescara. De Cecco claims that, because Molino conducts operations essential to De Cecco, Molino is in fact more integral to De Cecco than Pescara. De Cecco asserts that it would be inconsistent with the reasoning set forth in *Final Results of Antidumping Administrative Review: Certain Cold Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea,* 62 FR 18430 (April 15, 1997) (*Steel Flat Products from Korea*), to treat transfers of semolina from Molino to De Cecco differently from transfers of semolina from Pescara to De Cecco.

The petitioners observe that in the first administrative review of this proceeding, the Department rejected the same argument by De Cecco and employed the major-input rule inasmuch as Molino was separately incorporated from De Cecco during the POR. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Italy,* 64 FR 6615, 6621–6623 (February 10, 1999) (*96/97 Final Results*). Given that the law and the facts of this review are the same as the preceding review, the petitioners argue that the Department should continue to value Molino's semolina production at Molino's transfer price.

DOC Position: The Department does not agree that semolina De Cecco purchased from its affiliated supplier, Molino, should be exempt from the application of the major-input rule. Thus, in accordance with sections 773(f)(2) and (3) of the Act, for purposes of calculating COP and CV, we have continued to rely on the higher of the transfer price, the market price of the inputs, or the actual costs incurred by the affiliated supplier in producing the input. This finding is consistent with the Department's final results in the first administrative review of this proceeding. *See 96/97 Final Results,* 64 FR at 6621–6623.

As we noted in the 96/97 *Final Results,* the Department has applied this interpretation consistently since implementation of the URAA, except in those situations where it treats respondents who are producers of the subject merchandise as a single entity for purposes of sales reporting and margin calculations. Because each company in question, De Cecco and Molino, is a separate legal entity in Italy, we disagree with the respondent that the operational reality of close association between the two companies outweighs the legal form of the entities.

Moreover, we disagree with De Cecco that Molino should be granted the same treatment as Pescara, a producer of the subject merchandise, because Molino's operational relationship to De Cecco renders it more integral to the respondent than Pescara. We collapsed the sales and production activities of Pescara and De Cecco in accordance with 19 CFR 351.401(f), not because of the integral nature of what each entity does for the other. Section 351.401(f) of the regulations provides for special treatment of affiliated producers where the potential for manipulation of prices or production in an effort to evade antidumping duties imposed on the sale of subject merchandise exists. In accordance with this section of the regulations, we collapse all sales prices and production costs of the affiliated entities as if they were a single company. Since we do not apply the major-input rule for transactions within the same company, the major-input rule does not apply for transactions between Pescara and De Cecco. Molino is solely a producer of semolina and not of the subject merchandise and thus, unlike Pescara, Molino is not subject to the collapsing regulation of section 351.401(f) of the Department's regulations. Therefore, we have continued to treat De Cecco and Molino as separate entities for the purposes of reporting costs. We have continued to treat Pescara, which is both a producer of the subject merchandise and a semolina supplier, and De Cecco as a single entity for sales reporting and the calculation of an antidumping margin for the final results. Thus, consistent with the exception to the major-input rule established in the *Steel Flat Products from Korea* case, we have collapsed De Cecco and Pescara for cost calculation purposes. In effect, the

Department, for purposes of these final results, has treated De Cecco and Pescara as one entity and, thus, the major-input rule is not applicable. Therefore, we have used the actual COP to value semolina obtained by De Cecco from Pescara.

Comment 3: Difference in Merchandise Adjustment

Assuming arguendo that the Department continues to employ the major-input rule and uses the transfer price between Molino and De Cecco, De Cecco contends that the Department should not make a difference in merchandise (DIFMER) adjustment for vitamin enrichment when comparing similar products. According to De Cecco, section 351.411(b) of the Department's regulations requires that the Department only consider differences in variable costs associated with physical differences in merchandise when adjusting for differences in merchandise compared. The only physical difference between pasta products sold in the home market and those sold in the United States is vitamin enrichment, *i.e.,* home market pasta products are not vitamin enriched (non-enriched pasta) whereas U.S. products are vitamin-enriched (enriched pasta). Thus, each product code sold in the United States has a comparable product sold in the home market that, with the exception of enrichment, is identical. Accordingly, De Cecco's per-unit cost of enrichment is the appropriate measure of the DIFMER adjustment. Because Molino transfers enriched and non-enriched semolina at the same price, however, De Cecco does not incur a difference in the variable cost of manufacturing enriched versus non-enriched pasta. De Cecco argues, therefore, that if the Department bases De Cecco's COP and CV on the transfer price from Molino under section 773(f)(3) of the Act, the transfer price is also the appropriate measure for the DIFMER adjustment.

The petitioners argue that the Department should continue to add a cost-based DIFMER adjustment to NV in order to account for physical differences in merchandise being compared. The petitioners note that while section 773(f)(3) of the Act governs the major-input rule, DIFMER adjustments are mandated by section 773(a)(6)(C)(ii) of the Act. Whereas the DIFMER requirement ensures that physical differences in merchandise are always considered when making product comparisons, the purpose of the major-input rule is to ensure that costs are properly captured for purposes of the sales-below-cost test. Therefore, the petitioners contend that the Department has no discretion to disregard the physical differences of the merchandise being compared.

DOC Position: We agree with De Cecco. The petitioners' assertions overlook the fact that the Department does not rely on a respondent's reported costs solely for the calculation of COP and CV. We also use cost information in a variety of other aspects of our margin calculations. For example, when determining the commercial comparability of the foreign like product in accordance with section 771(16) of the Act, it has been our long-standing practice to rely on product-specific VCOMs and TCOMs for U.S. and home market merchandise. Likewise, when making a DIFMER adjustment to NV in accordance with section 773(b) of the Act, it has been our practice to calculate the adjustment as the difference between the product-specific VCOMs for the U.S. and home market merchandise compared. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews,* 63 FR 2557, 2573–74 (January 15, 1998).

As noted above in *Comment 2,* in calculating De Cecco's COP and CV for pasta, we employed the major-input rule and, consequently, valued the semolina used in the production of pasta at the transfer price from De Cecco's affiliate, Molino. In this case, the transfer price from Molino to De Cecco was the same for both enriched and non-enriched semolina. In valuing De Cecco's semolina cost to reflect the transfer price, we made a direct adjustment to De Cecco's reported COP and CV material costs, which had been valued by De Cecco at Molino's cost of production. Since material cost is a component of the VCOM and of the TCOM, and these are in turn components of COP and CV, we should also have adjusted the material cost component of both VCOM and TCOM to reflect the use of transfer price for the material cost, but did not. Accordingly, we have now adjusted the VCOM and TCOM to reflect the use of transfer price for the material cost and have made our determination of whether a DIFMER adjustment is appropriate using the revised VCOM data. This decision is consistent with section 773(a)(6) of the Act, which grants us the discretion to determine a suitable method to calculate a DIFMER adjustment and does not restrict our selection of an appropriate methodology to any particular approach.

Comment 4: Vitamin Costs

According to the petitioners, the Department should adjust De Cecco's reported average cost of vitamin enrichment to reflect actual costs. Although De Cecco claimed that it calculated its vitamin cost by dividing the cost incurred for vitamins used during the POR by the total quantity of enriched pasta produced, the petitioners argue that non-enriched pasta products were included in the denominator. As a result, the petitioners continue, the unit cost for U.S. products to be added to NV as part of the DIFMER adjustment was understated. Therefore, the petitioners request that the Department exclude the production quantities of non-enriched pasta products from the denominator of the per-unit vitamin enrichment cost calculation.

De Cecco maintains that the submitted production quantity indeed includes only vitamin-enriched pasta produced by De Cecco for its U.S. affiliate, PMI. De Cecco claims that the petitioners' claim is inaccurate because the product codes questioned by the petitioners represent bulk pasta that is placed in containers for shipment, but is not packaged for sale at retail. Assuming arguendo that, for the final results, the Department relies upon De Cecco's cost information, including the costs of vitamin enrichment, De Cecco contends that the Department should continue to rely upon De Cecco's submitted per-unit vitamin enrichment costs.

DOC Position: As discussed above in *Comment 2,* the Department is recalculating De Cecco's VCOM and TCOM components of COP and CV in light of our reliance upon the major-input rule, thereby altering the DIFMER calculation. Because we are using a single transfer price from Molino for both enriched and non-enriched semolina, rather than Molino's costs, the arguments put forth by the petitioners and De Cecco as to the accuracy of the per-unit cost of vitamin enrichment in the DIFMER calculation are moot.

Comment 5: Classification of Sales as EP and CEP

The petitioners urge the Department to reclassify De Cecco's reported EP sales as CEP sales because of PMI's role in the EP channels of distribution. Although De Cecco stated in its responses that there is no difference between PMI's role in the EP and CEP channels of distribution and that De Cecco's CEP sales would qualify for EP sales were it not for the existence of inventory in the United States, the

petitioners allege that De Cecco's description of its sales process clearly indicates that the selling activities for its U.S. sales took place in the United States. For example, PMI invoiced U.S. customers and collected payments from U.S. customers and, therefore, according to the petitioners, took title to the pasta before selling the merchandise to U.S. customers. The petitioners argue that reclassification of De Cecco's reported EP sales as CEP sales is further supported by the methodology used by De Cecco to allocate PMI's indirect selling expenses equally over its U.S. sales, indicating that De Cecco considered the role PMI played in EP and CEP sales to be similar. Since the function of PMI was not limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. customer, the petitioners contend that the Department, consistent with its policy, should classify all of De Cecco's U.S. sales as CEP sales.

De Cecco counters that PMI's role in the U.S. sales process is consistent with that in the first administrative review and, therefore, the Department should continue to find that De Cecco correctly classified its U.S. sales. According to De Cecco, it classified its U.S. sales as EP sales where the subject merchandise was shipped directly from De Cecco's factory in Italy to the unaffiliated customer in the United States, the manner of sale and shipment was the customary channel between De Cecco and its unaffiliated customer, and the role of PMI was merely that of a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. customer. In response to the petitioners' comments, De Cecco argues that PMI took title but not possession and never placed the subject merchandise in its inventory. Furthermore, invoicing customers, collecting cash payments, and taking title to the subject merchandise are consistent with the role of a sales-related paper processor and communications link. Given that PMI's functions are consistent with the Department's requirement that the role of the sales agent be limited to paper processing and providing a communications link with the unaffiliated U.S. customer, De Cecco maintains that the Department should not reclassify De Cecco's U.S. sales.

DOC Position: We agree with De Cecco that the facts on the record of this review show that the sales reported as EP sales should continue to be classified as EP sales. Pursuant to sections 772(a) and (b) of the Act, an EP transaction is a sale of merchandise by a producer or exporter outside the United States for export to the United States that is made prior to importation. A CEP sale is a sale made in the United States, before or after importation, by or for the account of the producer or exporter or by an affiliate of the producer or exporter. In determining whether sales involving a U.S. subsidiary should be characterized as EP sales, the Department has examined the following criteria: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. affiliate is limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unrelated U.S. buyer. *See, e.g., Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review,* 64 FR 26934 (May 18, 1999); *Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada (Canadian Steel)* 63 FR 12725, 12738 (March 16, 1998). In the *Canadian Steel* case, the Department clarified its interpretation of the third prong of this test, as follows:

> Where the factors indicate that the activities of the U.S. affiliate are ancillary to the sale (*e.g.*, arranging transportation or customs clearance, invoicing), we treat the transactions as EP sales. Where the U.S. affiliate has more than an incidental involvement in making sales (*e.g.*, solicits sales, negotiates contracts or prices, or provides customer support), we treat the transactions as CEP sales.''

63 FR at 12738.

With respect to the first prong of the test, it is undisputed that the merchandise associated with the subject merchandise at issue was shipped directly from De Cecco's factory in Italy to the unaffiliated customer in the United States without passing through PMI's inventory.

With respect to the second prong of the test, this manner of sale and shipment is the customary commercial channel between the parties involved. EP sales were made with the participation of PMI in the investigation and in the immediately preceding review. Thus, this is a customary channel of trade. We note, however, that it is not necessary for EP sales to be the predominant channel of trade in a given review for it to be the customary channel between the parties involved.

With respect to the third prong of the test, the Department verified in the first administrative review that while PMI serves as a connection to De Cecco for supporting activities in the United States, prices, terms, and conditions in effect were established by De Cecco in Italy and were applied to all sales in the United States. *See* Verification of the Sales Response of F.lli De Cecco di Filippo Fara S. Martino S.p.A. (''De Cecco'') in the First Administrative Review of the Antidumping Duty Order of *Certain Pasta from Italy*, dated September 2, 1998, at 8. The record in this review demonstrates no new fact pattern and supports a conclusion that PMI's participation in these sales relates to services among those the Department considers as being ''ancillary'' to the sale. PMI does not solicit or negotiate these sales, does not set the price for these sales, and provides little customer support in connection with these sales.

Therefore, for these final results, we are continuing to treat as EP transactions those sales which De Cecco reported as EP sales.

Comment 6: Indirect Selling Expenses Incurred in the United States

Assuming arguendo that the Department does not reclassify De Cecco's EP sales as CEP transactions, the petitioners argue that the Department should not grant De Cecco a CEP offset and should remove indirect selling expenses incurred by De Cecco in Italy from the CEP starting price. If the Department continues to accept De Cecco's classification of U.S. sales, grants a CEP offset, and retains De Cecco's indirect selling expenses in Italy in the CEP, the petitioners argue that the Department should reallocate indirect selling expenses incurred by PMI between De Cecco's reported EP and CEP sales. The petitioners note that De Cecco allocated indirect selling expenses incurred in the United States by PMI over all U.S. sales using the same ratio of indirect selling expenses over total sales revenue, regardless of whether the sales were EP or CEP, because PMI's role in EP and CEP sales did not differ. The petitioners contend, however, that De Cecco's allocation methodology is flawed since the selling activities for EP sales must take place outside the United States whereas the selling activities for CEP sales generally occur within the United States. In De Cecco's case, EP sales were made directly to distributors, while CEP sales were distributed from warehouses in the United States maintained by PMI. These CEP sales incurred additional costs related to inventory maintenance and transportation arrangements, which

were likely captured as part of PMI's indirect selling expenses. Hence, the petitioners urge the Department to reallocate De Cecco's total reported indirect selling expenses incurred by PMI for its U.S. sales such that all of these expenses are applied to CEP sales only (*see, e.g., Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Round Wire from Korea*, 64 FR 17342 (April 9, 1999)) or, alternatively, ensure that these expenses are allocated based on the proportion of EP and CEP sales.

De Cecco claims that the petitioners' arguments lack factual support and are based on a mischaracterization of the record in this review. According to De Cecco, PMI's role is fundamentally the same for EP and CEP sales. PMI's selling functions are limited since De Cecco sells almost exclusively to distributors and, but for the U.S. inventory used to supply certain customers, all U.S. sales would be classified as EP. The only cost differences between EP and CEP sales are those costs associated with transporting merchandise to and storing the merchandise in the U.S. warehouses. In addition, ocean freight, U.S. brokerage and handling, and other transport expenses were reported to account for differences in EP and CEP sales. PMI did not incur additional expenses as a result of communication with the warehouses since PMI sent orders for EP sales to Italy and orders for CEP sales to the warehouses and, therefore, did not expend any additional level of effort for CEP sales. Therefore, De Cecco urges the Department to reject the petitioners' allocation method in favor of the method submitted by De Cecco, which is consistent with the methodology used in the first administrative review.

DOC Position: We agree with De Cecco that the company's methodology is appropriate. In *Stainless Steel Round Wire from Korea*, we allocated U.S. indirect selling expenses entirely to CEP sales because the record indicated that the respondent had not isolated the expenses associated with the significantly active role, in terms of selling activities, played by the affiliate with respect to CEP sales. In its response, De Cecco listed four general categories of U.S. indirect selling expenses incurred by PMI: salaries and benefits, services, depreciation, and other income or expenses. Based on our analysis of the record, we find that there is no evidence indicating that these indirect selling expenses were proportionately related more to CEP sales. These expenses relate to all of De Cecco's sales in the United States during the POR, not just CEP sales. *See* De Cecco's November 5, 1998 questionnaire response, at C–30, Exhibit C–16 (detailing the indirect selling expenses incurred in the United States by PMI). Therefore, we have continued to allocate these expenses among EP and CEP sales.

With respect to the petitioners' request that the we deduct indirect selling expenses incurred in Italy for U.S. sales from the U.S. price to calculate the CEP, as explained above in *Comment 1*, section 772(d) of the Act requires that only those indirect selling expenses attributable to U.S. sales and associated with economic activities occurring in the United States be deducted from the CEP starting price. Accordingly, we have not altered our CEP calculation in this regard for these final results.

Comment 7: Home Market Rebates

The petitioners argue that the Department should disregard two of De Cecco's home market rebates (''Other Rebates #1'' and ''Other Rebates #2'') as direct deductions from price since the record does not establish whether these two rebates were transaction-specific or were granted as a fixed percentage of sales price. According to the petitioners, the Department's practice, as affirmed by the United States Court of International Trade in *SKF USA, Inc.* v. *United States*, No. 97–01–00054, Slip Op. 99–56 at 8–15 (Ct. Int'l Trade June 29, 1999) (*SKF*), is to disregard rebates as direct deductions unless the actual amount for each individual sale was calculated. *See also Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom: Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 61 FR 66472, 66498 (Dec. 17, 1996) (*AFBs 93/94 Final Results*).

De Cecco asserts that the record is complete as to the nature of these rebates and the allocation methodology. All of De Cecco's rebates are granted in the normal course of business for programs known by the buyer in advance of the sale. According to De Cecco, the reported rebates are allocated as they were granted, by customer, over the sales to which they apply. As such, De Cecco contends that all of the rebates granted by De Cecco, including ''Other Rebates #1'' and ''Other Rebates #2,'' meet the Department's established standards for direct adjustments to price.

DOC Position: We agree with De Cecco that the record is complete with respect to these two rebate categories. In its November 5, 1998 questionnaire response, at page B–27, De Cecco described ''Other Rebates #1'' and ''Other Rebates #2'' as general rebate categories, granted for various reasons and including all other rebates granted to customers that cannot be classified into one of the other specific rebate categories. Thus, transaction-specific reporting was not feasible given the large number of sales and the miscellaneous nature of these adjustments. In describing the method by which rebates were reported to the Department, De Cecco stated that it ''divided the total customer-specific rebate value for each type of rebate by the total net sales value for the customer'' in order to derive an actual rebate ratio (emphasis supplied). *See* De Cecco's November 5, 1998 questionnaire response, at B–24. This rebate ratio, in turn, was applied to the unit price net of discounts to compute the specific rebate for each item listed on the invoice. Furthermore, De Cecco stated that it ''computed the rebates for each of the rebate fields in the same manner.'' Thus, sufficient information was provided to establish that De Cecco's ''Other Rebates #1'' and ''Other Rebates #2'' were allocated on a reasonable customer-specific manner and otherwise in accordance with section 351.401(g) of the Department's regulations. Accordingly, for these final results, we have continued to treat ''Other Rebates #1'' and ''Other Rebates #2'' as direct deductions to home market prices.

With regard to *SKF*, we note that that case related to Department practice which pre-dated the URAA and adoption of section 351.401(g) of the Department's regulations. Although *AFBs 93/94 Final Results* was issued post-URAA, the Department's current allocation methodology for price adjustments was upheld by the United States Court of International Trade. *See Timken Co.* v. *United States*, 16 F. Supp. 2d 1102 (CIT 1998) (approving the Department's post-URAA policy for treating rebates as selling expenses where the information submitted is reliable and verifiable).

Comment 8: Negative U.S. Discounts

The petitioners observe that De Cecco reported negative values for ''on invoice'' discounts on certain U.S. sales, despite the fact that De Cecco's questionnaire responses stated that any discounts are reported as positive values. Accordingly, the petitioners suggest that the Department convert the negative discount amounts in De Cecco's U.S. sales database to positive amounts in order to make the reported

discount amounts consistent with De Cecco's narrative response.

De Cecco notes that these negative discounts are insignificant because each has its first non-zero value in the fifth position to the right of the decimal point, *i.e.*, thousandths of a cent. Consequently, De Cecco urges the Department to set these negative discounts to zero rather than converting the discounts to positive values.

DOC Position: We agree with the petitioners. De Cecco clearly stated in its November 5, 1998, questionnaire submission, at page C–14, that ''[a]ny discount is reported as a positive value.'' Moreover, it is reasonable to presume that all discounts, where reported, are intended to be deductions from the U.S. gross unit price, irrespective of the significance of the charge. Therefore, for the final results we have converted the negative discount values in De Cecco's U.S. sales database to positive values.

Comment 9: CEP Profit

The petitioners claim that the Department made two errors with respect to selling expenses used in the calculation of CEP profit. First, the Department erroneously subtracted imputed credit and inventory carrying costs, which were reported by De Cecco on a pound basis, from total direct and indirect selling expenses, which were both converted from a pound basis to a kilogram basis earlier in the margin calculation program. Second, in attempting to deduct the sum of imputed inventory carrying costs incurred in the United States (when calculating the total actual selling expenses for U.S. sales), the Department inadvertently double-counted the field, thereby understating the CEP profit rate.

De Cecco agrees with the petitioners' suggested revisions to the calculation of CEP profit.

DOC Position: We agree with both parties and have made the appropriate changes for these final results.

La Molisana

Comment 10: Inclusion of Purchased Pasta Costs in COP

La Molisana claims that the cost of purchased pasta, where the unaffiliated supplier is identifiable, should not be included in the calculation of La Molisana's weighted-average COP for each control number (CONNUM). La Molisana alleges that in submitting COP and CV data to the Department, it erred by including in the weighted-average cost, by CONNUM, pasta that could be linked to specific unaffiliated suppliers. As a result of incorporating the price paid for purchased pasta in the weighted-average cost calculations, the actual COP, weight-averaged by CONNUM, is distorted with respect to the number of home market sales appearing to fall below cost and the DIFMER adjustment calculation.

La Molisana urges the Department to revise the company's weighted-average COP and CV data to exclude the cost of pasta purchased from unaffiliated suppliers, where such suppliers can be separately identified, for purposes of the sales-below-cost test, for the following reasons: (1) the Department did not consider sales of pasta products that were purchased wholly from other manufacturers, and were identified as such in the sales databases, for purposes of the calculation of dumping margins; (2) the antidumping questionnaire instructed respondents to exclude the costs of purchased pasta from the weighted-average cost of manufacturing, where the supplier of the pasta type sold can be identified; [3] (3) Appendix III of the antidumping questionnaire instructed respondents to weight-average costs for CONNUMs based on production volumes and costs incurred in the production process, but pasta purchased from unaffiliated suppliers is not part of La Molisana's production process; (4) the Department's established practice in this proceeding is to exclude separately identifiable purchased pasta from weighted-average costs; (5) pursuant to section 773(b)(3)(A) of the Act, the COP is equal to ''the cost of materials of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business,'' thus, given that pasta purchased from unaffiliated suppliers is not the foreign like product produced by La Molisana, it should not be included in the weighted-average costs; and (6) it is the Department's judicially-mandated duty to correct an ''obvious and easily correctable'' error (*see NTN Bearing Corp.* v. *United States*, 73 F.3d 1204 (1995) (remarking that it is the Department's duty to calculate accurate antidumping margins); *see also Koyo Seiko Co.* v. *United States*, 14 CIT 680, 682 (1990) (emphasizing that fair and accurate determinations are critical for the proper administration of antidumping laws). Given the record evidence and the arguments set forth, La Molisana contends that the Department should correct the error in the cost information submitted by La Molisana for the final results.

The petitioners claim that La Molisana's arguments regarding its cost data are inconsistent with the respondent's statements in its questionnaire response. Specifically, La Molisana stated in its March 22, 1999, response that ''[p]ursuant to the Department's instructions, La Molisana has recalculated the COP and CV for each CONNUM based on the actual cost of manufacturing incurred during the POR, *i.e.*, July 1, 1997 through June 30, 1998.'' As such, the petitioners contend that the Department should reject the information and arguments submitted by La Molisana.

DOC Position: We agree with La Molisana in part. When pasta purchased from an unaffiliated supplier cannot be separately identified for sales purposes by the respondent (so-called ''commingled pasta''), the Department's practice is to include the cost of purchased pasta in the weighted-average cost of manufacture. If purchased pasta can be directly tied to specific sales by the respondent, the associated costs of that purchased pasta are excluded from the weighted-average cost of manufacture. The evidence on the record shows that La Molisana's reported COPs and CVs may include the cost of purchased pasta that was subsequently resold where the purchased pasta could be directly tied to specific sales.

In response to the Department's September 1, 1998, antidumping duty questionnaire, [4] La Molisana included in its weighted-average costs, the price paid for pasta types and shapes that were purchased in part from outside suppliers, but which were commingled with pasta La Molisana itself manufactured, and thus which could not be linked to specific sales. However, La Molisana also erroneously included the costs of purchasing pasta, where the subsequent sales by La Molisana can be

[3] La Molisana concedes that the antidumping questionnaire required respondents to include commingled pasta in the weighted-average cost of manufacture. Commingled pasta is a pasta type that has been both produced by the respondent and purchased from an unaffiliated supplier, but which cannot be separately identified, in the weighted-average cost of manufacture. La Molisana claims, however, that the costs it is requesting that the Department remove are not of commingled pasta, but of pasta that can be specifically linked to other unaffiliated suppliers.

[4] Appendix V of the antidumping duty questionnaire required all respondents who made sales of commingled pasta during the POR ''to provide a single weighted-average cost of manufacture reflecting the actual costs of manufacture and the costs associated with purchasing commingled pasta types'' for each CONNUM in which the company had sales of commingled pasta. Respondents were also directed to exclude the costs of purchased pasta where the supplier of the pasta type sold could be identified in the weighted-average cost of manufacturing.

tied directly to the supplier from whom pasta was purchased. Although we instructed La Molisana to provide detailed worksheets illustrating how the weighted-average costs for each CONNUM were derived, La Molisana did not provide such worksheets for each unique CONNUM reported in the COP and CV databases. Therefore, we are unable to correct all of La Molisana's CONNUMs to exclude the costs of pasta types wholly purchased and subsequently resold by La Molisana. Consequently, where there is available information on the record to allow us to revise accurately La Molisana's COP and CV data to exclude costs of purchased pasta (where La Molisana did not produce that particular pasta type), we have done so for these final results.

Comment 11: DIFMER Calculation

According to La Molisana, the Department's calculation of the DIFMER adjustment incorrectly accounted for differences other than physical differences in merchandise, contrary to the Department's regulations. *See* 19 CFR 351.411 (requiring that the Department, in comparing U.S. sales with comparison market sales, make reasonable adjustments to NV for differences in physical characteristics between the merchandise sold in the United States and the merchandise sold in the foreign market that have an effect on prices). La Molisana contends that the only physical difference between the merchandise sold in the home market and the United States is that the merchandise sold in the United States is vitamin-enriched and has a minuscule difference in the cost of scrap. Due to La Molisana's improper inclusion of purchased pasta in the reported weighted-average COP and CV databases, however, the DIFMER adjustment calculated by the Department for La Molisana contains significant cost differences between virtually identical products sold in the home market and the United States. This problem will be resolved, La Molisana concludes, if the Department recalculates weighted-average costs in light of the error described above in *Comment 10*. Thus, La Molisana urges the Department to recalculate La Molisana's DIFMER adjustment based on the fact that the only physical differences in merchandise between merchandise sold in the United States and in the home market is for vitamin enrichment and scrap.

According to the petitioners, given La Molisana's own statements on the record that the same CONNUMs in the home market may have a slightly different cost of production than the corresponding CONNUM of pasta exported to the United States, the Department should reject La Molisana's arguments regarding the DIFMER adjustment. Specifically, La Molisana stated that differences in the VCOM between CONNUMs of pasta sold in the home market and of pasta exported to the United States exist, in part, because CONNUMs in the home market contain a greater variety and number of pasta shapes and pasta types, some of which are more expensive and more costly to produce or that are only purchased from unrelated suppliers.

DOC Position: Pursuant to 19 CFR 351.411, in making a reasonable allowance for differences in the physical characteristics of merchandise sold in the home market that is compared to merchandise sold in the United States, the Department ''will consider only differences in the variable costs associated with the physical differences'' (emphasis supplied). As noted above in *Comment 10*, La Molisana was required to provide a single weighted-average cost of manufacture by CONNUM to reflect ''the actual costs of manufacture and the costs associated with purchasing commingled pasta types.'' Since material cost is a component of the VCOM and the TCOM, and these in turn are components of COP and CV, we adjusted La Molisana's reported material costs to reflect the costs associated with purchasing commingled pasta types. We note, however, that the costs of purchased pasta do not solely contain the variable cost elements of producing pasta, but also include fixed cost elements. In order to eliminate the possibility of distortions in La Molisana's DIFMER adjustment, it is appropriate to base the calculation solely on the basis of La Molisana's actual costs of producing pasta. Accordingly, based on available information on the record, we have altered our DIFMER calculation for these final results to remove the costs of purchased pasta from the variable material costs. *See* Analysis Memorandum for La Molisana Industrie Alimentari S.p.A. for the Final Results of the Second Administrative Review on *Certain Pasta from Italy*, February 7, 2000.

We further note that the reliance on La Molisana's actual costs of production for the DIFMER adjustment calculation is distinguished from De Cecco's DIFMER calculation, described above in *Comment 3*, inasmuch as De Cecco purchased semolina, which is a variable cost component of producing pasta.

Maltagliati

Comment 12: Treatment of Customer Categories in Level of Trade Analysis

Maltagliati claims that flaws in the Department's level of trade (LOT) methodology caused the Department to erroneously combine home market customer categories 3 (distributors) and 4 (retailers) into a single home market LOT.

First, the Department's quantitative analysis of selling functions should be based on the quantity (weight) of customer category sales associated with a selling function, rather than on the number of customer category transactions for a selling function. Maltagliati claims that nothing it does in the sale of pasta or in the servicing of customers to achieve those sales is based on the number of observations, Maltagliati provides its own LOT analysis based on quantities sold and claims that the results of this analysis supports classifying customer category 3 into a separate LOT (which Maltagliati claims is similar to the U.S. LOT in terms of both selling functions and average sales quantity).

Maltagliati then claims that, by averaging the specific selling activities captured in the selling activity group [5] for sales administration and marketing support into one overall figure, the Department has diluted the significance of these activities. This error is further compounded when the Department summarizes the results of its LOT analysis for each of its five selling activity groups, and gives the sales administration and marketing support selling activity group the same weight as that of the other four selling activity groups. Maltagliati further argues that two of the Department's five selling activity groups (freight and delivery, and warehousing) are not true selling functions which influence whether or not a sale will be made, but rather are freight-related activities which occur as a result of the sale. As such, these selling activity groups should be excluded from the Department's LOT analysis.

Finally, Maltagliati argues that the Department did not apply the same complete LOT analysis to Maltagliati that it applied to La Molisana, another respondent in this review. Maltagliati asserts that, even though Maltagliati and

[5] *See* Memorandum for Gary Taverman from John Brinkmann, ''97/98 Administrative Review of Pasta from Italy and Turkey: Level of Trade Findings,'' dated August 2, 1999 (*LOT Memo*) (setting forth sales process and marketing support, freight and delivery, warehousing, advertising, and quality assurance/warranty service as the selling activity groups considered in the LOT analysis)

La Molisana had similar levels of selling expense differences in the customer categories analyzed, the Department ultimately looked at the place of La Molisana's customer categories in the chain of distribution to determine their appropriate LOT. Maltagliati asserts that, if this methodology is applied to Maltagliati, the Department will find that Maltagliati's home market distributor customer category is at a different LOT than its retail home market customer category, and that the home market distributor customer category is at the same LOT as its U.S. LOT.

The petitioners contend that the Department applied its standard LOT analysis and properly classified Maltagliati's home market retail and distributor customer category sales as the same LOT. They counter Maltagliati's claim that the Department should measure selling activities on the basis of quantity sold by noting that this approach is not supported by the statute or the Department's regulations and practice, and fails simple reasoning. They cite, *inter alia,* section 351.412(c)(2) of the Department's regulations, which states that the Department ''will determine that sales are made at different levels of trade if they are made at different marketing stages,'' as an example of the emphasis on measuring the activities of ''sales'' rather than quantities, and of the Department's obligation to measure how frequently the selling activity is utilized in the different marketing stages. Since sales ''observations'' reported by Maltagliati are analogous to sales, it is proper for the Department to rely upon reported observations to determine the frequency with which certain claimed selling activities were incurred within each customer category. They further note that measuring by quantity sold does not affect the level of effort required to perform a selling function. For example, if freight service was offered to customers in customer categories 3 and 4, regardless of quantity sold, the same selling functions must be performed (*e.g.* contacting the freight company, receiving a freight quote, hiring the freight company, and paying the freight company). The quantity sold does not alter or change the effort or amount of the selling function in any manner, and the only varying factor is whether a particular selling activity was performed for a particular sale.

Regarding Maltagliati's contention that the discounts, rebates and commissions included in the sales administration and marketing support selling activity should be segregated into separate selling activity groups, the petitioners note that these components are direct deductions to the gross unit price. As ''like selling activities'' it is therefore appropriate to analyze all types of price adjustments in a single category. Finally, the petitioners reject Maltagliati's argument that freight and delivery and warehousing are not true selling activities. Contrary to Maltagliati's position, offering freight on a sale could help make the sale in the first place if the customer finds value in that selling activity.

DOC Position: We agree with Maltagliati that customer categories 3 (distributors) and 4 (retailers) should be classified as separate and distinct LOTs in the home market; however, we have made this determination based on a reconsideration of the quantitative and qualitative information described in the preliminary results *LOT Memo.* We continue to disagree with Maltagliati that the Department's LOT analysis should be based on quantity of merchandise sold, rather than the number of sales, and that the Department's classification and consideration of LOT selling groups and activities was distortive.

In determining the sufficiency of Maltagliati's claim that distributors and retailers constitute separate home market LOTs, we reconsidered the services performed for sales to distributors and retailers in each of the selling activity groups. For the sales administration and marketing support selling activity group, we observed that Maltagliati provided retailers with more types of discounts (*i.e.,* category discounts, promotional discounts, and quantity discounts) than it did to distributors and relied upon sales agents more frequently for sales to distributors than for sales to retailers. We further find that the types of year-end rebates in question are based on the quantity of pasta purchased over the year, and do not require the same level of sustained selling activities associated with the discounts, which often must be determined on a sale-specific basis. Therefore, for these final results we have concluded that for the sales administration and marketing support selling activity group, Maltagliati performs a higher level of selling activities for retailers than it does for distributors.

In reconsidering the types of selling activities performed in the advertising and sales promotion selling activity group, we have determined that Maltagliati places a much stronger emphasis on advertising and promoting sales to retailers than to distributors. Examples of direct advertising in the home market include: leaflets announcing short-term promotions to consumers, hiring of people to stand in stores to direct consumers to the promoted product, advertising on trucks, advertising in newspapers, advertising on telephone book/yellow pages, promotional items (*e.g.,* caps, pens, aprons, posters, football team t-shirts, and other related activities), brochures, catalogs, and attendance at food fairs. *See* Maltagliati's October 6, 1998 questionnaire response, at A–8; Analysis Memorandum for Pastificio Maltagliati S.p.A. in the Preliminary Results in the Second Administrative Review on *Certain Pasta from Italy,* August 2, 1999, at Attachment 2, page 5; *see also infra Comment 13.* The nature of these activities demonstrates that, in terms of the number and variety of advertising programs, most of Maltagliati's advertising activities are directed at consumers, the customers of retailers, rather than at the customers of distributors (*e.g.,* retailers, restaurants). Therefore, for the final results, we have concluded that Maltagliati performs a higher level of selling activity for advertising and sales promotion for retailers than it does for distributors.

Based on the higher degree of selling activities associated with sales process and marketing support, and advertising, that Maltagliati performs with respect to retailer sales, we now consider distributors and retailers to constitute separate levels of trade in the home market. Furthermore, we have determined that home market sales at the distributor level of trade were made at the same level of trade as U.S. sales, and for the final determination, where possible, we have compared Maltagliati's U.S. sales to the distributor LOT in the home market. *See* Final Results Analysis Memorandum for Pastificio Maltagliati S.p.A., December 7, 1999.

Since we have subsequently classified Maltagliati's retail and distributor sales as separate LOTs, for the reasons noted above, the specific objections raised by Maltagliati concerning the Department's LOT analysis of Maltagliati are moot. However, it should be noted that the final LOT analysis for Maltagliati was based on the same general methodology described by the Department in the *LOT Memo,* which was utilized in the *Preliminary Results.* We disagree with Maltagliati's principal arguments that the Department should measure utilization of a selling activity by the quantity of merchandise sold. We further disagree that the Department's categorization of selling activities into five selling activity groups has diluted the significance of certain selling activities (*i.e.,* those in the sales

administration and marketing support) while other activities, such as freight and warehousing, are not selling activities but rather freight-related activities that occur as a result of the sale. The Department's bases for measuring a company's utilization of claimed selling activities and for categorizing selling activities into selling activity groups are fully explained in the *LOT Memo.*

Comment 13: Treatment of Advertising Expense

The petitioners argue that Maltagliati's home market advertising expenses are general in nature and should be treated as indirect selling expenses. The petitioners explain that qualifying advertising expenses (*i.e.,* direct advertising) are only those advertising expenses that are directed at the customer's customer. In particular, the petitioners claim that Maltagliati's most significant claimed advertising expense, incurred for an international food exhibition, CIBUS, was not specifically directed to Maltagliati's customers' customers.

Maltagliati explained that the Department verified and found the claimed advertising expenses were aimed at either Maltagliati's distributors' customers (*i.e.,* aimed at retailers), or at the Maltagliati's retailers' customers (*i.e.,* aimed at end users). Therefore, these expenses were specific and direct.

DOC Position: We agree with Maltagliati and continue to treat the reported home market advertising as a direct expense. At verification we noted that ''all advertising included as a direct expense appeared to be targeted at Maltagliati's customers' customer.'' *See* Verification of the Questionnaire Response of Pastificio Maltagliati S.p.A. (''Maltagliati'') in the Second Administrative Review of the Antidumping Duty Order of Certain Pasta from Italy, June 22, 1999, at 25, 26. Moreover, we consider the CIBUS fair to be a direct advertising expense because, as we noted at the sales verification, this fair, which was open to the public, was attended by the customers of Maltagliati's customers, including retailers (distributors' customers) and end-users (retailers' customers).

Comment 14: Calculation of Imputed Credit

The petitioners claim that the Department failed to deduct billing adjustments from the home market gross price before calculating the imputed credit expense.

Maltagliati argues that billing errors are usually found and corrected after a customer pays for its purchase. As a result, Maltagliati suggests that taking a credit on this expense is appropriate.

DOC Position: We agree with the petitioners. Credit expenses are the costs of financing sales accounts receivables. Imputed credit expenses, therefore, represent the amounts that the Department attributes to theoretical interest expenses incurred between the shipment date and payment date. In this respect, a billing adjustment is only made because a mistake was made in billing. Therefore, in order to accurately calculate imputed credit, it is appropriate to deduct billing adjustments before calculating imputed credit. We note that in the Preliminary Results we deducted billing adjustments from the U.S. gross price before calculating the U.S. imputed credit expense. Therefore, for these final results, we have deducted home market billing adjustments from the gross price before calculating the home market imputed credit expense.

Comment 15: Calculation of Entered Value

The petitioners claim that the Department incorrectly calculated the entered value used to calculate the countervailing duty adjustment by failing to deduct U.S. customer discounts, U.S. duties, and U.S. commissions from the gross price.

Maltagliati argues that entered value is typically based on an F.O.B. price and that only ocean freight and marine insurance should be deducted from the C.I.F. or C & F duty paid price to obtain the F.O.B. price.

DOC Position: We agree in part with the petitioners and in part with Maltagliati. Where the actual entered value has not been provided in the U.S. sales response, it is the Department's practice to estimate entered value on an F.O.B. basis. For instance, in *Polyvinyl Alcohol from Taiwan: Final Results of Antidumping Duty Administrative Review,* 63 FR 32810 (June 16, 1998), we estimated the entered value by deducting international movement expenses from the sales value. Since all of Maltagliati's commissions in this review are incurred and paid by the seller and are not part of the actual value of the invoice, we are not deducting the commissions from the gross price to calculate entered value. However, we note that in Maltagliati's case, some of the sales terms are C.I.F. or C & F duty paid. In addition, with regard to discounts, we agree with the petitioners that discounts recorded on the invoice as deductions to the gross unit invoice price should be deducted from the gross unit price for purposes of determining entered value in order to reflect the actual amount invoiced to the customer. Therefore, for the final results, in addition to deducting ocean freight and marine insurance, we are also deducting U.S. duty and on-invoice discounts from the gross U.S. price to calculate entered value.

Comment 16: Conversion into Proper Unit of Measure

The petitioners argue that the Department failed to convert U.S. advertising expenses to the proper unit of measure.

Maltagliati notes that the Department manually recalculated the U.S. advertising expenses and inserted the correct expense into the SAS program.

DOC Position: We agree with Maltagliati. *See* Analysis Memorandum for Pastificio Maltagliati S.p.A. in the Preliminary Results in the Second Administrative Review on Certain *Pasta from Italy,* August 2, 1999, at Attachment 3.

Comment 17: Calculation of General and Administrative Expenses

The petitioners argue that the Department failed to add packing to the total cost of manufacture before calculating G&A expenses for CV.

Maltagliati explains that it is a moot point since no U.S. sales were matched to CV.

DOC Position: We agree with the petitioners. Maltagliati calculated its G&A expenses based on a sales denominator that included packing. When this ratio is multiplied by a cost of manufacturing that is exclusive of packing, as was done in the preliminary calculations, the resulting G&A amount is understated. Consequently, for the final results, we have corrected our calculations by adding U.S. packing costs to the revised cost of manufacture before calculating CV.

Comment 18: Calculation of Interest Expense

The petitioners argue that the Department failed to recalculate interest expense, for the purposes of COP and CV, based on the revised cost of manufacture resulting from changes in the cost of semolina that the Department identified at verification.

DOC Position: We agree with the petitioners and have recalculated interest expense based on the revised cost of manufacture. Furthermore, for the reasons delineated in *Comment 17,* we have added home market and U.S. packing, respectively, to the total cost of manufacturing before recalculating interest expense for COP and CV.

Rummo

Comment 19: CEP Profit

According to Rummo, in calculating the total net revenue component of the CEP profit, the Department incorrectly converted U.S. quantity from pounds to kilograms. Rummo contends that the effect of multiplying per-unit amounts expressed in U.S. dollars per pound by kilograms instead of pounds overstates the amount of U.S. revenue for each sale. This in turn inflates Rummo's CEP profit ratio because the total revenue amount used to calculate the profit is overstated.

The petitioners claim that, based on the record, it is ambiguous as to whether U.S. quantity is reported in pounds or kilograms. Assuming arguendo that U.S. quantity was reported in pounds, the petitioners note that the Department did not convert U.S. quantity from pounds to kilograms because U.S. quantity was multiplied, not divided, by 2.20462 when calculating total net revenue. Since the Department consistently calculated revenue, selling expenses and movement expenses by multiplying these items by 2.20462, the petitioners argue that the Department should not make any changes to the final margin program.

DOC Position: We agree with Rummo that we miscalculated the CEP profit ratio. We disagree, however, with Rummo's assessment that we inadvertently converted U.S. quantity from pounds to kilograms. As the petitioners noted, we multiplied, not divided, U.S. quantity by 2.20462. Therefore, we have corrected the calculation of U.S. revenue, selling expenses, and movement expenses. In addition, we discovered that an error existed in the calculation of U.S. cost of goods sold, in that we did not convert U.S. quantity from pounds to kilograms where the record is clear that U.S. quantity was reported in pounds. Therefore, in the final margin calculation program, we have converted U.S. quantity from pounds to kilograms in the calculation of U.S. cost of goods sold for purposes of determining CEP profit.

Comment 20: U.S. Warehousing Expenses

Rummo argues that the methodology by which the Department calculated the per-unit U.S. warehousing expense is incorrect because it did not account for transshipments between warehouses. The Department had calculated per-unit U.S. warehousing expense by dividing the cost of operating each warehouse by the total quantity of pasta sold from each warehouse. Rummo contends that since a given warehouse may transfer pasta to another warehouse and incur an expense that is captured in the numerator, the denominator should include the sum of pasta sold out of a warehouse and the quantity of pasta transshipped to another warehouse. The Department's methodology overstated the per-unit warehouse expense for warehouses that transshipped a large quantity of pasta, yet only sold a small quantity of pasta. If the Department disagrees with the above methodology, Rummo suggests that the Department use a simple average for warehousing expense.

The petitioners contend that since Rummo improperly reported warehousing expense as an indirect selling expense instead of a movement expense, the Department should not recalculate warehousing expense using transshipped quantities. Furthermore, the petitioners note that the transshipped quantities were not verified.

DOC Position: The Department agrees with Rummo that the methodology used in the *Preliminary Results* overstated certain per-unit warehouse expenses. However, the Department disagrees with Rummo's suggestion to calculate a per-unit warehouse expense by dividing total expenses incurred by the sum of quantity sold and transshipments. The warehousing expense should capture expenses incurred only from sold pasta.

Therefore, for the final results, the Department calculated a weighted-average warehousing expense by dividing the sum of expenses incurred from each warehouse by the total quantity of pasta sold from each warehouse.

Comment 21: Treatment of In-Store Demonstration Expenses

In the *Preliminary Results,* the Department reclassified in-store demonstration expenses, reported by Rummo as indirect selling expenses, as direct selling expenses because such expenses were aimed at Rummo's customers' customer. Rummo argues that in-store demonstration expenses are properly classified as indirect selling expenses. Although Rummo pays a fee to a company to perform in-store demonstrations, Rummo has no control over whether any demonstrations are actually performed. Thus, Rummo claims that it is improper to treat these expenses as ''advertising'' expenses when Rummo is uncertain as to whether the funds were even used for advertising.

The petitioners assert that Rummo would not pay a fee to a company unless it received some service in return. Otherwise, Rummo would renegotiate its agreement in order to exclude these fees. Moreover, these fees should be classified as direct expenses since they are aimed at the customers of Rummo's customers.

DOC Position: We agree with the petitioners. Rummo never claimed in its responses that it paid a fee to a company for in-store demonstrations without certain knowledge as to whether the in-store demonstrations actually occurred. Section 351.410(d) of the Department's regulations defines expenses that are assumed by the seller on behalf of the buyer as ''assumed expenses'' or ''assumptions'' which are treated as direct selling expenses. For this reason, an assumption of the advertising expense to a customer's customer is often referred to as ''direct advertising'' and is treated as a direct expense. *See Notice of Final Results and Antidumping Duty Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom,* 62 FR 2102 (January 15, 1997) (Comment 5); *see also Antidumping Duties; Countervailing Duties; Proposed Rule,* 61 FR 7308, 7346–47 (1996). Therefore, we are continuing to treat in-store demonstration expenses as direct selling expenses.

Final Results of Review

As a result of our review, we determine that the following margins exist for the period July 1, 1997 through June 30, 1998:

Manufacturer/Exporter	Margin (percent)
Corex	zero
De Cecco	0.44 (de minimis)
La Molisana	15.71
Maltagliati	14.99
Pallante	3.44
Puglisi	0.19 (de minimis)
Rummo	2.41

The Department shall determine, and the United States Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the estimated entered value of the same merchandise. We will direct the United States Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise entered during the POR, except where the assessment rate is zero or *de minimis* (*see* 19 CFR 351.106(c)(2)).

Cash Deposit Requirements

To calculate the cash-deposit rate for each producer and/or exporter included in this administrative review, we divided the total antidumping duties due for each company by the total net value for that company's sales during the review period.

Furthermore, the following cash deposit rates will be effective for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption upon publication of the final results of this administrative review, as provided by section 751(a)(2)(A) and (C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates indicated above, except if the rate is less than 0.5 percent and, therefore, *de minimis,* the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 11.26 percent, the ''All Others'' rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR 38547 (July 24, 1996). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 7, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–3391 Filed 2–11–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–001]

Sorbitol From France: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 22, 1999 the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on sorbitol from France. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period April 1, 1998 through March 31, 1999. We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: February 14, 2000.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2924 (Baker), (202) 482–5222 (James).

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 351 (1999).

Background

The Department published an antidumping duty order on sorbitol from France on April 9, 1982 (47 FR 15391). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the period April 1, 1998 through March 31, 1999 on April 15, 1999 (64 FR 18600). On April 30, 1999, SPI Polyols, Inc. (petitioner) requested that the Department conduct an administrative review of Roquette Freres (Roquette). We published a notice of initiation of the review on May 28, 1999 (64 FR 28973).

On December 22, 1999 the Department published in the **Federal Register** the preliminary results of review of the antidumping duty order (64 FR 71727). The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

The merchandise under review is crystalline sorbitol. Crystalline sorbitol is a polyol produced by the catalytic hydrogenation of sugars (glucose). It is used in the production of sugarless gum, candy, groceries, and pharmaceuticals.

Crystalline sorbitol is currently classifiable under item 2905.440.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the review.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. We made no changes to our analysis; therefore, we determine that a weighted-average dumping margin of 12.07 percent exists for Roquette for the period April 1, 1998 through March 31, 1999.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. For assessment purposes, we intend to instruct Customs to collect duties equal to 12.07 percent of the entered value of the subject merchandise.

Furthermore, the following deposit requirements will be effective upon

publication of this notice of final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be 12.07 percent; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will continue to be 2.90 percent, which is the ''all others'' rate from the LTFV investigation (47 FR 7459, February 12, 1982).

These deposit requirements will remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 771(i)(1) of the Act.

Dated: February 7, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–3392 Filed 2–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of California; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, US Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC

Docket Number: 99–032. *Applicant:* University of California, Los Alamos, NM 87545. *Instrument:* Solid State Quantum Computer, Model Multiprobe S. *Manufacturer:* Omicron Vakuum Physik GmbH, Germany. *Intended Use:* See notice at 64 FR 72649, December 28, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides an ultra-high vacuum chamber with compatible scanning probe, scanning tunneling and atomic force microscopes for depositing an array of phosphorus atoms on a silicon surface having the following capabilities: (1) An operating temperature range from 25 to 1500 degrees K, (2) adequate internal and external vibrational damping and isolation and (3) a 10 μm x 10 μm x 1 μm scan range to be used in a solid state quantum computer. A university center for advanced microstructural devices and the National Institute of Standards and Technology advise that (1): These capabilities are pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–3394 Filed 2–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 000208032–0032–01]

Public Meeting, Request for Comment on Rural and Small Market Access to Local Television Broadcast Signals

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice of public meeting; Request for public comment.

SUMMARY: The Assistant Secretary for Communications and Information and Administrator of the National Telecommunications and Information Administration (NTIA), Gregory L. Rohde, will host a roundtable discussion open to the public that will explore rural and small market access to local television broadcast signals (Rural TV Roundtable). NTIA also requests public comment on the ways to ensure that television viewers in rural regions, small markets, and other unserved areas of the United States can receive greater access to local programming through new technologies. New technological innovations are providing unprecedented opportunities to expand the reach of broadcast programming to America's rural regions, small markets, and other unserved areas. While some viewers in rural and small markets and other unserved areas have been able to receive broadcast network programming via cable and satellite, these programming signals often originate hundreds or even thousands of miles away, and do not provide these communities with local programming. This notice, through a series of questions, requests public comment on issues relating to the means by which access to local television can be made available to television viewers in small markets, rural communities and other unserved areas.

DATES: The Rural TV Roundtable will be held from 9:30–11:30 a.m. on March 2, 2000. Written comments must be filed on or before April 14, 2000. Written reply comments must be filed on or before May 15, 2000.

ADDRESSES: The Rural TV Roundtable will be held from 9:30–11:30 a.m. on March 2, 2000, at the U.S. Department of Commerce, Room 4830, 1401 Constitution Avenue NW, Washington, DC 20230. The meeting will be open to the public. For current information on the roundtable, please see NTIA's website at http://www.ntia.doc.gov/ntiahome/ruraltvroundtable/.

The Department invites the public to submit written comments in paper or electronic form. Comments may be mailed to Robert Krinsky, Office of Policy Analysis and Development, National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, Room 4725, 1401 Constitution Avenue, N.W., Washington, DC 20230. In the alternative, comments may be submitted in electronic form to the following electronic mail address: <ruraltv@ntia.doc.gov>.

Submission of Documents

Written Comments

Paper submissions should include three paper copies and a version on diskette in PDF, ASCII, Word Perfect (please specify version) or Microsoft Word (please specific version) format. Diskettes should be labeled with the name of the party, and the name and version of the word processing program used to create the document. Comments and reply comments submitted via email to *ruraltv@ntia.doc.gov* should also be submitted in the formats specified above.

All comments and reply comments should be captioned ''Rural and Small Market Access to Local Television Broadcast Signals—Comment [or Reply Comment], Docket No. 000208032–0032–01.'' Comments and reply comments should be numbered and organized in response to the questions set forth in this Notice.

Comments and reply comments received will be posted on the NTIA web site at *http://www.ntia.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Robert Krinsky, Office of Policy Analysis and Development, National Telecommunications and Information Administration; telephone (202) 482–1880; or electronic mail <rkrinsky@ntia.doc.gov>.

Media enquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Background

Changes in the copyright law brought about by the enactment of the Satellite Home Viewer Improvement Act of 1999 (SHVIA) have provided an opportunity for satellite services to deliver local broadcast signals into local markets. Early reports, however, indicate that so-called ''local-into-local'' service will be offered only in relatively large markets and not available to viewers in rural and small communities. The purpose of this NTIA request for public comment is to explore whether there are other ways to ensure that viewers in these underserved communities can receive the benefit of access to local programming through new technologies.

Last year Congress examined one proposal, a new loan guarantee program, as a means of promoting the delivery of local broadcast signals in rural and small markets. As a complement to Congressional efforts, NTIA has undertaken this request for public comment on the viability of any means of providing local broadcast television service to rural regions, small markets, and other unserved areas, including any legal, economic, or technological impediments. NTIA will also conduct a public meeting that will feature a roundtable discussion of these issues.

Questions for Public Comment

Interested parties are requested to submit written comments on any issue of fact, law, or policy that may inform the U.S. Department of Commerce on rural and small market access to local television broadcast signals. Specifically, comment is requested on the questions set forth below. These questions are designed to assist the public, however, and should not be construed as a limitation on the issues on which public comment may be submitted. Comments should cite the number of the question(s) addressed. Please provide copies of any studies, research, or other empirical data referenced in the comments.

1. Is it technologically feasible today to deliver local-into-local broadcast service to rural regions, small markets, and other unserved areas? This might include comments on satellite, enhancements to terrestrial digital television, wireless cable, video streaming, wireless packet data, and other technological means.

2. What are the trade-offs between the technology options?

3. Under what circumstances is the use of one technology more appropriate than another?

4. Should multiple technologies be used to accomplish the delivery of local television service to rural regions, small markets, and other unserved areas?

5. What are the economic impediments, if any, to the use of any of the technologies that might be used to facilitate local television service to rural regions, small markets, and other unserved areas?

6. What are the legal impediments, if any, to the use of any of the technologies that might be used to facilitate local television service to rural regions, small markets, and other unserved areas?

7. What legal measures, if any, should be taken to foster the delivery of local television service to rural regions, small markets, and other unserved areas?

8. What economic and technological policy measures, if any, should be taken to foster the delivery of local television service to rural regions, small markets, and other unserved areas?

Public Participation: The Rural TV Roundtable is open to the public on a first-come, first-served basis and physically accessible to people with disabilities. To facilitate entry into the Department of Commerce building, please have a photo identification available and/or a U.S. Government building pass if applicable. Any member of the public wishing to attend and requiring special services, such as a sign language interpretation or other ancillary aids, should contact Robert Krinsky, Office of Policy Analysis and Development, U.S. Department of Commerce, at least five (5) working days prior to the Rural TV Roundtable, at either telephone number (202) 482–1880 or electronic mail at <rkrinsky@ntia.doc.gov>.

Gregory L. Rohde,

Assistant Secretary for Communications and Information.

[FR Doc. 00–3402 Filed 2–11–00; 8:45 am]

BILLING CODE 3510–60–P

COMMODITY FUTURES TRADING COMMISSION

Notice of the First Renewal of the Global Markets Advisory Committee

SUMMARY: The Commodity Futures Trading Commission has determined to renew the charter of its ''Global Markets Advisory Committee.'' As required by Sections 9(a)(2) and 14(a)(2)(A) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, 9(a)(2) and 14(a)(2)(A), and 41 C.F.R. 101–6.1007 and 101–6.1029, the Commission has consulted with the Committee Management Secretariat of the General Services Administration. The Commission certifies that the renewal of this advisory committee is necessary and is in the public interest in connection with the performance of duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.,* as amended. This notice is published pursuant to Section 9(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, 9(a)(2), and 41 C.F.R. 101–6.1015.

FOR FURTHER INFORMATION CONTACT: George G. Wilder, Legal Counsel to Commissioner Barbara P. Holum, at 202–418–5142, or Marcia K. Blase,

Committee Management Officer, at 202–418–5138. Written comments should be submitted to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

SUPPLEMENTARY INFORMATION: The globalization of the futures and options markets has been a principal development of the past decade. Such global expansion is characterized by:

- An increasing number of futures markets being established internationally,
- The increasingly multinational nature of regulated U.S. firms,
- The increasing presence of foreign competitors in the U.S.,
- The international linking of markets,
- Concerns about international market risk, and
- An increased demand by U.S. market users for global brokerage services. Markets are inextricably linked through common products and related market participants. Events that occur in one market can and frequently do cause global regulatory and business concerns.

The Global Markets Advisory Committee's charter directs the committee to assist the Commission in gathering information concerning the regulatory challenges of a global marketplace, including: (1) Avoiding unnecessary regulatory or operational impediments faced by those doing global business, such as differing and/or duplicative regulatory frameworks, lack of transparency of rules and regulations and barriers to market access, while preserving core protections for markets and customers; (2) setting appropriate international standards for regulating futures and derivatives markets and intermediaries; (3) assessing the impact on U.S. markets and firms of the Commission's international efforts and the initiatives of foreign regulators and market authorities; (4) achieving continued global competitiveness of U.S. markets and firms; and (5) identifying methods to improve domestic and international regulatory structures.

The Commission has actively worked with foreign regulators to address global market issues. Recent global initiatives have been designed to enhance international supervisory cooperation and emergency procedures, to establish concrete standards of best practices that set international benchmarks for regulating futures and derivatives markets, to encourage improved transparency in those markets, to improve the quality and timeliness of international information sharing and to encourage jurisdictions around the world to remove legal or practical obstacles to achieving these goals.

The Commission anticipates that the Global Markets Advisory Committee will provide a valuable forum for information exchange and advice on these matters. The reports, recommendations and general advice from the committee will enable the Commission to assess more effectively the need for possible statutory, regulatory, policy or programmatic initiatives to address the challenges posed by the globalization of the marketplace.

Commissioner Barbara P. Holum will serve as Chairman and Designated Federal Official of the advisory committee. The committee's membership will be composed of representatives of the markets, firms and market users most directly involved in and affected by the globalization of the industry, and will include, but not be limited to, representatives of U.S. and foreign exchanges, regulators and self-regulators, financial intermediaries, market users, traders and academics. The advisory committee's membership will be balanced in terms of point of view.

The Commission has found that advice on specialized matters of the sort described above is best obtained through the advisory committee framework rather than through other, more costly, less flexible and less efficient means of assembling persons from all sectors of the financial services industry. The Commission has also found that the Global Markets Advisory Committee will not duplicate the functions of the Commission, another existing advisory committee, or other means such as public hearings. The Commission has concluded, therefore, that the renewal of the Global Markets Advisory Committee is essential to the accomplishment of its mission and is in the pubic interest.

Upon publication of this notice in the **Federal Register**, a copy of the first renewal charter of the Global Markets Advisory Committee will be filed with the Chairman of the Commission, the Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Agriculture. A copy of the first renewal charter will be furnished to the Library of Congress and to the Committee Management Secretariat and will be posted on the Commission's website at http://www.cftc.gov.

Issued in Washington, D.C., on February 8, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–3299 Filed 2–11–00; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Department of Defense Acquisition University.

ACTION: Board of visitor meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Packard Conference Center, Building 184, Ft. Belvoir, Virginia on Wednesday, March 1, 2000 from 0900 until 1500. The purpose of this meeting is to report back to the BoV on continuing items of interest. The agenda will also include presentations by two of the FY 1999 DAU External Acquisition Research Program recipients.

The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Mr. John Michel at 703–845–6756.

Dated: February 8, 2000.

L.M. Bynum,

Alternate, OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 00–3349 Filed 2–11–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Meeting

ACTION: Notice of cancellation of Advisory Committee meeting.

SUMMARY: The Defense Science Board was scheduled to meet in closed session at the Pentagon, Arlington, VA, on January 26–27, 2000. However, due to severe weather conditions, the meeting was cancelled and has not been rescheduled. Notice of this meeting was published in the **Federal Register** on November 24, 1999 (Volume 64, Number 226, Page 66173).

Dated: February 8, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–3351 Filed 2–11–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on March 7, 2000, March 14, 2000, March 21, 2000, and March 28, 2000, at 10 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000

Dated: February 8, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 00–3350 Filed 2–11–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete a records system.

SUMMARY: The Department of the Air Force proposes to delete a system of records notice from its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. Records formerly maintained under F090 AF IG A, Inspector General Records - Freedom of Information Act are now being maintained under F090 AF IG B, Inspector General Records published on June 8, 1999, at 65 FR 30491.

DATES: The action will be effective on March 15, 2000, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice as amended, published in its entirety.

Dated: February 8, 2000.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F090 AF IG A

SYSTEM NAME:

Inspector General Records—Freedom of Information Act *(June 11, 1997, 62 FR 31793).*

Reason: Records have been consolidated into F090 AF IG B, Inspector General Records published on June 8, 1999, at 65 FR 30491.

[FR Doc. 00–3354 Filed 2–11–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 15, 2000, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop 5603, Ft. Belvoir, VA 22060-5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806-4390 or DSN 656-4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 8, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0600o TAPC

SYSTEM NAME:

Army Career and Alumni Management Information System, Pre-separation and Job Assistance Counseling *(April 2, 1999, 64 FR 15956).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Army Career and Alumni Program (ACAP XXI)'.

SYSTEM LOCATION:

Delete from entry 'Total'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete from entry 'Total'.

* * * * *

A0600o TAPC

SYSTEM NAME:

Army Career and Alumni Program (ACAP XXI).

SYSTEM LOCATION:

Primary location: Headquarters, U.S. Army Personnel Command, ATTN: TAPC-PDT-O, 200 Stovall Street, Alexandria, VA 22332-0476.

Secondary locations: Army Career and Alumni Program Centers. A complete list of ACAP centers may be obtained by writing to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense military personnel (active/reserve duty) and their spouses; U.S. Coast Guard personnel and their spouses; Department of Defense civilian employees and their spouses; U.S. Army National Guard personnel and their spouses; DoD personnel who retired no earlier than ninety (90) days prior to the date they requested ACAP services; and widows and widowers of deceased active duty military personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain individual's name, home address, Social Security Number, date of birth, job qualifications, DD Form 2648 (Pre-Separation Counseling Checklist), and similar or pre-separation/transition counseling related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C., Chapter 58; DoD Directive 1332.35; and E.O. 9397 (SSN).

PURPOSE(S):

To provide transition planning/counseling for individuals so that they may re-enter the civilian job market.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored electronically on computers and on paper in file folders.

RETRIEVABILITY:

By name or Social Security Number.

SAFEGUARDS:

All records are maintained in secured areas, accessible only to designated personnel whose official duties require they have access. The personal computer system can only be accessed through a system of passwords known only to the individual and the system administrator/supervisor. Paper files are secured in locked file cabinets. The areas where the personal computer and paper files are located are secured after duty hours in locked buildings.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Personnel Command, ATTN: TAPC-PDT-O, 200 Stovall Street, Alexandria, VA 22332–0476.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in the system should address written inquiries to the Director of the ACAP Center where transition assistance was obtained or contact the system manager.

Requesting individual must submit full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Director of the ACAP Center where transition assistance was obtained or contact the system manager.

Requesting individual must submit full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, and the U.S. Coast Guard records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0614–30 DAPE

SYSTEM NAME:

DA Conscientious Objector Review Board *(February 22, 1993, 58 FR 10002)*.

Changes:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–43 DAPE'.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–43, Conscientious Objection; and E.O. 9397 (SSN)'.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete second paragraph and replace with 'To the Selective Service System Headquarters for the purpose of identifying individuals who have less than 180 days active duty, and who have been discharged by reason of conscientious objection.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Retained by the Department of the Army Conscientious Objector Review Board for 1 year after transfer or separation of individual. Copy of application and Board decision become part of the individual's Official Military Personnel File permanently'.

* * * * *

A0600–43 DAPE

SYSTEM NAME:

DA Conscientious Objector Review Board.

SYSTEM LOCATION:

DA Conscientious Objector Review Board, Room 5S33, Hoffman Building II, Alexandria, VA 22332–2600.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army personnel who apply either for separation based on conscientious objection (1–O) or reassignment/reclassification to noncombatant training and service based on conscientious objection (I–A–O).

CATEGORIES OF RECORDS IN THE SYSTEM:

Case record consists of individual's application (DA Form 4187), results of interview evaluation by military chaplain and a psychiatrist recorded on DA Form 3822–R, command's report of investigation, evidence submitted by applicant, witness statements, hearing transcript or summary, information or records from the Selective Service System if appropriate, applicant's rebuttal to commander's recommendation; DA Conscientious Objector Review Board correspondence with applicant, summary of evidence considered, discussion, conclusions, names of voting DACORB members, disposition of application, and similar relevant material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–43, Conscientious Objection; and E.O. 9397 (SSN).

PURPOSE(S):

To investigate claims of service member that he/she is a conscientious

objector to participation in war or to the bearing of arms and to make final determination resulting in assignment of appropriate status or awarding of discharge.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Selective Service System Headquarters for the purpose of identifying individuals who have less than 180 days active duty, and who have been discharged by reason of conscientious objection.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically, by applicant's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who have an official need therefor, within building that employs security guards.

RETENTION AND DISPOSAL:

Retained by the Department of the Army Conscientious Objector Review Board for 1 year after transfer or separation of individual. Copy of application and Board decision become part of the individual's Official Military Personnel File permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 300 Army Pentagon, Washington, DC 20310–0300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records may write to the Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, ATTN: DAPE–ZXI–IC (PA Officer), 300 Army Pentagon, Washington, DC 20310–0300.

Individuals should provide their full name, current address and information verifiable within the record itself. In addition, the request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records may write to the Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, ATTN: DAPE–ZXI–IC (PA Officer), 300 Army Pentagon, Washington, DC 20310–0300.

Individual should provide their full name, current address and Social Security Number, and the request must be signed.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her commander, official records required by Army Regulation 600–43.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–3355 Filed 2–11–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Amendment to the Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Stabilization of the Bluff Toe at Norco Bluffs

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DOD.

ACTION: Notice of intent.

SUMMARY: The Los Angeles District intends to revise the EIS currently being prepared for stabilization of the toe bluff, along the Santa Ana River in the City of Norco, California, to address the internal levees within Prado Basin, the portion of the Santa Ana River immediately below Prado Dam, and the endangered species and critical habitat that have been designated since the original SEIS was released in August 1988. The revised EIS will be released as a Supplement to the August 1988 Phase II General Design Memorandum Main Report and Supplemental EIS for the Santa Ana Mainstem Including Santiago Creek, California. The SEIS will analyze potential impacts on the environment of a range of alternatives, including the recommended plan.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Alex Watt by telephone at (213) 452–3860, or Ms. Hayley Lovan by telephone at (213) 452–3863. They may also be contacted by fax at (213) 452–4204, or by mail at the address below.

SUPPLEMENTARY INFORMATION: The Army Corps of Engineers is currently preparing an EIS to assess the environmental effects associated with the water conservation within the Prado Basin. This is a separate project, and is not associated with the flood control project that is being addressed in the SEIS. The public will have the opportunity to comment on this analysis before any action is taken to implement the proposed action.

Scoping: The U.S. Army Corps of Engineers will hold the scoping period open until March 1, 2000 to allow the public, as well as Federal, State, and local agencies to participate in the scoping process by submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, alternatives that should be addressed in the analysis, and potential mitigation measures associated with the proposed action.

Comments, suggestions, and requests to be placed on the mailing list for announcements and for the Draft EIS, should be sent to Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–RQ, P.O. Box 532711, Los Angeles, CA 90053.

Availability of the Draft EIS: The Draft EIS is expected to be published and circulated in April 2000, and a public hearing to receive comments on the Draft EIS will be held after it is published.

Dated: February 4, 2000.

John P. Carroll,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 00–3390 Filed 2–11–00; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Notice of Availability of the ''Annual Report to Congress on the Status of the Harbor Maintenance Trust Fund for Fiscal Year 1998''

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: This notice is to inform the general public of the availability of the ''Annual Report to Congress on the Status of the Harbor Maintenance Trust Fund for Fiscal Year 1998.'' A copy of the report may be obtained free of charge by contacting Mr. James D. Hilton. The report is also available on the Corps web site at http://www.wrsc.usace.army.mil/iwr. Click on Products and then click on reports.

FOR FURTHER INFORMATION CONTACT: Mr. James D. Hilton, Operations Division, Office of the Chief of Engineers, at (202) 761–8830, fax (202) 761–1685, or e-mail James.D.Hilton@usace.army.mil.

SUPPLEMENTARY INFORMATION: The Harbor Maintenance Fee was authorized under Sections 1401 and 1402 of the Water Resources Development Act of 1986, Public Law 99–662. This law imposed a 0.04 percent fee on the value of commercial cargo loaded (exports and domestic cargo) or unloaded (imports) at ports which have had Federal expenditures made on their behalf by the U.S. Army Corps of Engineers since 1977. Section 11214 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–580, increased the Harbor Maintenance Fee to 0.125 percent, which went into effect on January 1, 1991. Harbor Maintenance Trust Fund monies are used to pay up to 100 percent of the Corps eligible Operations and Maintenance expenditures for the maintenance of commercial harbors and channels. Section 201 of the Water Resources Development Act of 1996, Public Law 104–303, expanded the use of Harbor Maintenance Trust Fund monies to pay Federal expenditures for construction of dredged material disposal facilities necessary for the operation and maintenance of any harbor or inland harbor; dredging and disposing of contaminated sediments that are in or that affect the maintenance of Federal navigation channels; mitigating for impacts resulting from Federal navigation operation and maintenance activities; and operating and maintaining dredged material disposal facilities.

Section 330 of the Omnibus Budget Reconciliation Act of 1992, Public Law 102–580, requires that the President provide an Annual Report to Congress on the Status of the Trust Fund. The release of this report is in compliance with this legislation.

Dated: February 8, 2000.

Eric R. Potts,

Colonel, Corps of Engineers, Executive Director for Civil Works.

[FR Doc. 00–3295 Filed 2–11–00; 8:45 am]

BILLING CODE 3710–92–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 14, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 8, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Paul Douglas Teacher Scholarship Program Performance Report.

Frequency: Annually.

Affected Public: Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 59; Burden Hours: 148.

Abstract: This program has not received funding since 1977. It was originally designed to assist State agencies to provide scholarships to talented and meritorious students who were seeking careers as teaching professionals.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–3326 Filed 2–11–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 15, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer,

Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 8, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Reinstatement.

Title: William D. Ford Federal Direct Loan Program General Forbearance Request Form.

Frequency: On Occasion.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden: Responses: 666,000; Burden Hours: 132,000.

Abstract: William D. Ford Federal Direct Loan Program borrowers will use this form to request a forbearance on their loans when they are willing but unable to make currently scheduled payments because of a temporary financial hardship.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–3327 Filed 2–11–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 15, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 8, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: State and Local Implementation of IDEA '97.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 7,305; Burden Hours: 15,384.

Abstract: The Office of Special Education Programs is conducting a five-year study to evaluate the state and local impact and implementation of the Individuals with Disabilities Education Act (IDEA) of 1997. The evaluation will provide information on the types and impacts of policies and practices engaged in by states, school districts, and schools to implement the provisions of IDEA '97, particularly with regard to nine key issues identified by the law. OSEP is engaging in this evaluation to report to Congress, in accordance with the provisions of IDEA '97 (Sec. 674). Clearance is sought for multiple instruments. Respondents will be state special education directors, district special education directors, and school principals.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila__Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–3328 Filed 2–11–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity; Notice of Members

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to list the members of the National Advisory Committee on Institutional Quality and Integrity (National Advisory Committee) and to give the public the opportunity to nominate candidates for the positions to be vacated by those members whose terms will expire on September 30, 2000. This notice is required under Section 114(c) of the Higher Education Act (HEA), as amended by Public Law 105–244.

What Is the Role of the National Advisory Committee?

The National Advisory Committee is established under Section 114 of the HEA, as amended, and is composed of 15 members appointed by the Secretary of Education from among individuals who are representatives of, or knowledgeable concerning, education and training beyond secondary education, including representatives of all sectors and type of institutions of higher education.

The National Advisory Committee meets at least twice a year and provides recommendations to the Secretary of Education pertaining to:

- The establishment and enforcement of criteria for recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.

As the Committee deems necessary or on request, the Committee also advises the Secretary about:

- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions to participate in Federally funded programs.
- The relationship between: (1) Accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

What Are the Terms of Office for Committee Members?

The term of office of each member is 3 years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed is appointed for the remainder of the term. A member may be appointed, at the Secretary's discretion, to serve more than one term.

Who Are the Current Members of the Committee?

The current members of the National Advisory Committee are:

Members With Terms Expiring 9/30/00

Dr. David W. Adamany, president emeritus and distinguished professor of law and political science, Wayne State University, Michigan
Mr. Robert L. Hawkins, superintendent, Colorado Mental Health Institute
Dr. Tanya L. Pollard, assistant professor, English Department, Macalester College, Minnesota
Dr. Eleanor P. Vreeland, chairman, Barland, Inc., New York
Dr. John A. Yena, president, Johnson & Wales University, Rhode Island

Members With Terms Expiring 09/30/01

Mrs. Wilhelmina R. Delco (committee chairperson), retired member of Texas House of Representatives
Dr. Alfredo G. de los Santos, Jr., Vice Chancellor Emeritus, Maricopa Community Colleges, Arizona
Dr. Kenneth B. Orr, president emeritus, Presbyterian College, South Carolina
Dr. Robert L. Potts, president, University of North Alabama
Dr. Richard F. Rosser, president of the Presidents' Group, Wisconsin

Members With Terms Expiring 9/30/02

Mr. Gordon M. Ambach (committee vice chairperson), executive director, Council of Chief State School Officers, Washington, DC
Dr. Norman Francis, president, Xavier University of Louisiana
Dr. George A. Pruitt, president, Thomas A. Edison State College, New Jersey
Dr. Norma S. Rees, president, California State University, Hayward
Hon. Thomas P. Salmon, chair of the board, Green Mountain Power Corporation, Vermont

How Do I Nominate an Individual for Appointment as a Committee Member?

If you would like to nominate an individual for appointment to the Committee, send the following information to the Committee's Executive Director:

- a cover letter that provides your reason(s) for nominating the individual; and
- contact information for the nominee (name, title, business address, and business phone and fax numbers) and a copy of the nominee's resume.

The information must be sent by March 30, 2000 to the following address: Bonnie LeBold, Executive Director, National Advisory Committee, U.S. Department of Education, 7th Floor, Rm. 7107, 1990 K St., NW, Washington, DC 20006.

How Can I Get Additional Information?

If you have any specific questions about the nomination process or general questions about the National Advisory Committee, please contact Ms. Bonnie LeBold, the Committee's Executive Director, by phone at (202) 219–7009, by fax at (202) 219–7008, or by e-mail at Bonnie__LeBold@ed.gov between 9 a.m. and 5 p.m., Monday through Friday.

Authority: 20 U.S.C. 1011c.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

[FR Doc. 00–3348 Filed 2–11–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities—National Programs—Federal Activities—Alcohol and Other Drug Prevention Models on College Campuses Grant Competition

AGENCY: Department of Education.

ACTION: Notice of Proposed Priority, Proposed Eligible Applicants, and Proposed Selection Criteria for Fiscal Year (FY) 2000 and Subsequent Years.

SUMMARY: The Secretary announces a proposed priority, proposed eligible applicants, and proposed selection criteria for FY 2000 and, at the discretion of the Secretary, for subsequent years under the Safe and

Drug-Free Schools and Communities—National Programs—Federal Activities—Alcohol and Other Drug Prevention Models on College Campuses Grant Competition. The Secretary takes this action to use Federal financial assistance to identify and disseminate models of alcohol and other drug (AOD) prevention at institutions of higher education (IHEs).

DATES: We must receive your comments on or before March 15, 2000.

ADDRESSES: Address all comments about the proposed priority, proposed eligible applicants, and proposed selection criteria to Kimberly Light, US Department of Education, 400 Maryland Avenue, SW, Room 3E222, Washington, DC 20202–6123. If you prefer to send your comments through the Internet, use the following address: comments@ed.gov

You must include the phrase ''Alcohol and Other Drug Prevention Models on College Campuses'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Kimberly Light, (202) 260–2647. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority, proposed eligible applicants, and proposed selection criteria. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3E222, 400 Maryland Avenue, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability that needs assistance to review the comments. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

General

Alcohol and other drug use are closely related problems that are frequently addressed together as part of comprehensive AOD prevention efforts. However, for the purposes of this competition, the Secretary is interested in making awards separately to IHEs that have innovative, effective programs aimed at alcohol prevention and to IHEs that have innovative, effective programs aimed at other drug prevention. These specific programs should be implemented within the context of a comprehensive AOD prevention effort on campus. IHEs that receive awards will use the funds to maintain, improve, or further evaluate their programs and disseminate information about these programs to other IHEs.

In making awards under this grant program, the Secretary may take into consideration the geographic distribution of the projects and the diversity of activities addressed by the projects in addition to the rank order of applicants.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrently with or following the publication of the notice of final priority. The notice inviting applications will specify the date and time by which applications for this competition must be received by the Department. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

Absolute Priority

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary proposes to give an absolute preference to applications that meet the following priority and fund under this competition only those applications that meet this absolute priority:

Under this priority, an IHE that wishes to be considered for an award for a model program must identify, propose to maintain, improve, or further evaluate, and propose to disseminate information about an effective alcohol or other drug prevention program currently being used on its campus. Applications must:

(1) Describe an alcohol or other drug prevention program that has been implemented for at least one full academic year on the applicant's campus;

(2) Provide evidence of the effectiveness of the program;

(3) Provide a plan to maintain, improve, or further evaluate the program during the year following award; and

(4) Provide a plan to disseminate information to assist other IHEs in implementing a similar program.

Eligible Applicants

The Secretary proposes that institutions of higher education (IHEs) are the eligible applicants under this competition, and that to be eligible, an IHE must not have received an award under this competition (under either CFDA 84.116X or 84.184N) during the previous two (2) fiscal years.

Selection Criteria

The Secretary proposes to use the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) Significance (25 points)

In determining the significance of the model, the following factors are considered:

(a) The extent to which the program involves the development or demonstration of innovative strategies that build on, or are alternatives to, existing strategies. (15 points)

(b) The potential replicability of the program, including, as appropriate, the potential for implementation in a variety of settings. (5 points)

(c) The extent to which the results of the program are to be disseminated in ways that will enable others to use the information or strategies. (5 points)

(2) Quality of the Program Design (40 points)

In determining the quality of the design of the program, the following factors are considered:

(a) The extent to which the design of the program reflects up-to-date knowledge from research and effective practice. (20 points)

(b) The extent to which the goals, objectives, and outcomes of the program are clearly specified and measurable. (5 points)

(c) The extent to which the design of the program is appropriate to, and

successfully addresses, the needs of the target population or other identified needs. (10 points)

(d) The quality of the plan to maintain, improve, or further evaluate the program. (5 points) In applying the above criteria, the following information is considered:

(1) The quality of the needs assessment and how well this assessment relates to the goals and objectives of the program.

(2) How well the program is integrated within a comprehensive alcohol and other drug prevention effort.

(3) The level of institutional commitment, leadership and support for alcohol and other drug prevention efforts.

(4) The clarity and strength of the institution's alcohol or other drug policies and the extent to which those policies are broadly disseminated and consistently enforced.

(5) The extent to which students and employees are involved in the program design and implementation process.

(6) The extent to which the institution has joined with community leaders to address AOD issues.

(7) If applying to be considered as an alcohol prevention model, what steps the institution is taking to limit alcoholic beverage sponsorship, advertising, and marketing on campus; and what steps are being taken to establish or expand upon alcohol-free living arrangements for students.

(3) Quality of the project evaluation. (35 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives and outcomes of the program. (10 points)

(b) The extent to which the evaluation data provide evidence of the effectiveness of the program in reducing either alcohol or other drug use, in reducing the problems resulting from either alcohol or other drug use, or in meeting outcome objectives that are associated with reductions in alcohol or other drug use or resulting problems. (25 points)

In applying the above criteria, the following information is considered:

(1) The quality of the evaluation methodology and evaluation instruments.

(2) Whether both process (formative) and outcome (summative) data are included for each year that the program has been implemented, including data collected both before and after initiation of the program.

(3) How evaluation information has been used for continuous improvement of the program.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Program Authority: 20 U.S.C. 7131.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the PDF you must have Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Domestic Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalogue of Federal Domestic Assistance Number 84.184N, Office of Elementary and Secondary Education-Safe and Drug-Free Schools and Communities-National Programs-Federal Activities-Alcohol and Other Drug Prevention Models on College Campuses Grant Competition)

Dated: February 8, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–3386 Filed 2–11–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition To Prevent High-Risk Drinking and Violent Behavior Among College Students

AGENCY: Department of Education.

ACTION: Notice of Proposed Priorities, Proposed Definitions, and Proposed Selection Criteria for Fiscal Year (FY) 2000 and Subsequent Years.

SUMMARY: The Secretary proposes priorities, definitions, and selection criteria for FY 2000 and, at the discretion of the Secretary, for subsequent years under the Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students. The Secretary takes this action to focus Federal financial assistance on an identified national need. This competition seeks to prevent high-risk drinking and violent behavior among college students.

DATES: Comments must be received on or before March 15, 2000.

ADDRESSES: All comments concerning these proposed priorities, proposed definitions, and proposed selection criteria should be addressed to Richard Lucey, Jr., U.S. Department of Education, 400 Maryland Avenue, SW—Room 3E252, Washington, DC 20202–6123. Comments also may be sent via the Internet: *comments@ed.gov.* You must include the phrase ''High-Risk Drinking and Violence Prevention for IHEs'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Richard Lucey, Jr., (202) 205–5471. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priorities, proposed definitions, and proposed selection criteria. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, at 400 Maryland Avenue, SW—Room

3E252, Washington, DC, between the hours of 8:30 a.m. and 5:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability that needs assistance to review the comments. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

Discussion of Priorities

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Definitions

1. ''Two-year institutions of higher education (IHEs)'' are defined as those IHEs or branches of IHEs that are public or private nonprofit organizations and confer at least a two-year formal award (certificate, diploma, or associate's degree), or have a two-year program creditable toward a baccalaureate degree or higher award.

2. ''High-risk drinking'' is defined as those situations that may involve but not be limited to: Binge drinking (commonly defined as five or more drinks on any one occasion); underage drinking; drinking and driving; situations when one's condition is already impaired by another cause, such as depression or emotional stress; or combining alcohol and medications, such as tranquilizers, sedatives, and antihistamines.

General

In making awards under this grant program, the Secretary may take into consideration the geographic distribution of the projects in addition to the rank order of applicants.

Contingent upon the availability of funds, the Secretary may make additional awards in FY 2001 from the rank-ordered list of nonfunded applications from this competition.

Note: This notice does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrently with or following the publication of the notice of final priorities. The notice inviting applications will specify the date and time by which applications for this competition must be received by the Department. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

Absolute Priorities: Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary proposes to give an absolute preference to applications that meet one or both of the following priorities, and would fund under this competition only those applications that meet one or both of the following absolute priorities:

Absolute Priority #1—Develop or Enhance, Implement, and Evaluate Campus-Based Strategies to Prevent High-Risk Drinking by College Student Athletes, First-Year Students, or Students Attending Two-Year Institutions

Under this proposed priority, applicants would be required to propose projects that develop or enhance, implement, and evaluate strategies to prevent high-risk drinking by college student athletes, first-year students, or students attending two-year institutions of higher education. Grant applicants would be required to:

(1) Identify the target population and provide a justification for its selection;

(2) Provide evidence that a needs assessment has been conducted on campus to document prevalence rates related to high-risk drinking by the population selected;

(3) Set measurable goals and objectives for the proposed project and provide a description of how progress toward achieving goals will be measured annually;

(4) Design and implement prevention strategies, using student input and participation, that research has shown to be effective in preventing high-risk drinking by the target population;

(5) Use a qualified evaluator to design and implement an evaluation of the project using outcomes-based (summative) performance indicators related to behavioral change and process (formative) measures that assess and document the strategies used; and

(6) Demonstrate the ability to start the project within 60 days after receiving Federal funding in order to maximize the time available to show impact within the grant period.

Absolute Priority #2—Develop or Enhance, Implement, and Evaluate Campus-Based Strategies to Prevent Violent Behavior by College Students

Under this proposed priority, applicants would propose projects that would develop or enhance, implement, and evaluate strategies to prevent violent behavior by college students. Grant applicants would be required to:

(1) Provide evidence that a needs assessment has been conducted on campus to document prevalence rates related to violent behavior;

(2) Set measurable goals and objectives for the proposed project and provide a description of how progress toward achieving goals will be measured annually;

(3) Design and implement prevention strategies, using student input and participation, that research has shown to be effective in preventing violent behavior among college students;

(4) Use a qualified evaluator to design and implement an evaluation of the project using outcomes-based (summative) performance indicators related to behavioral change and process (formative) measures that assess and document the strategies used; and

(5) Demonstrate the ability to start the project within 60 days after receiving Federal funding in order to maximize the time available to show impact within the grant period.

Selection Criteria

The Secretary proposes to use the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) Need for project. (15 points)

In determining the need for the proposed project, the following factors are considered:

(a) The magnitude or severity of the problem to be addressed by the proposed project. (10 points)

(b) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

(2) Significance. (20 points)

In determining the significance of the proposed project, the following factors are considered:

(a) The likelihood that the proposed project will result in system change or improvement. (5 points)

(b) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study. (10 points)

(c) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (5 points)

(3) Quality of the project design. (30 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10 points)

(b) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (5 points) a)

(c) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (10 points)

(d) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population. (5 points)

(4) Quality of project personnel. (10 points)

In determining the quality of project personnel, the following factors are considered:

(a) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (3 points)

(b) The qualifications, including relevant training and experience, of key project personnel. (7 points)

(5) Quality of the project evaluation. (25 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (10 points)

(b) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (10 points)

(c) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

Intergovernmental Review:

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Program Authority: 20 U.S.C. 7131.

Electronic Access To This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the PDF, you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

(Catalog of Federal Domestic Assistance Number 84.184H Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students)

Dated: February 8, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–3387 Filed 2–11–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184]

El Dorado Irrigation District; Notice of Meeting

February 7, 2000.

The license for El Dorado Hydroelectric Project No. 184 will expire on February 23, 2002. The deadline for filing applications for a new license for the project is February 22, 2000.

As requested by El Dorado Irrigation District (District), current licensee, by letter filed on February 7, 2000, the staff of the Federal Energy Regulatory Commission will attend the February 22, 2000, District Board meeting to explain the relicensing process and answer questions on that subject and the pending license amendment application from the board and any interested parties.

The meeting will be held at 9:30 A.M., at 2890 Mosquito Road, Placerville, California 95667. Any questions about Commission's proceedings should be directed to Hector M. Perez, (202) 219–2843, *hector.perez@ferc.fed.us.*

David P. Boergers,

Secretary.

[FR Doc. 00–3320 Filed 2–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–046]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 8, 2000.

Take notice that on February 1, 2000, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets to become effective February 1, 2000:

Twenty-First Revised Sheet No. 31
Fourth Revised Sheet No. 31A

El Paso states that the above tariff sheets are being filed to implement a negotiated rate contract pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at

Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–3310 Filed 2–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–029]

Koch Gateway Pipeline Company; Notice of Negotiated Rate Filing

February 8, 2000.

Take notice that on January 31, 2000, Koch Gateway Pipeline Company (Koch) tendered for filing contracts for disclosure of recently negotiated rate transactions. As shown on the contracts, Koch requests an effective date of February 1, 2000.

Special Negotiated Rate Between Koch and Koch Energy Trading

Koch states that it has served copies of this filing upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 15, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–3313 Filed 2–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–14–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff and Filing of Non-Conforming Service Agreements

February 8, 2000.

Take notice that on February 2, 2000, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance eight Rate Schedule TF–1 non-conforming service agreements and one Rate Schedule TF–2 non-conforming service agreement. Northwest also tendered the following tariff sheets as part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective March 2, 2000:

Sixth Revised Sheet No. 363
Fifth Revised Sheet No. 364
Fourth Revised Sheet No. 365
Original Sheet No. 366
Sheet Nos. 367 through 374

Northwest states that the Rate Schedule TF–1 service agreements contain contract-specific operational flow order provisions and the Rate Schedule TF–2 service agreement contains a scheduling priority provision imposing subordinate primary corridor rights. The tariff sheets are submitted to add such agreements to the list of non-conforming service agreements contained in Northwest's tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–3315 Filed 2–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1962–000]

Pacific Gas & Electric Company; Notice of Meeting

February 7, 2000.

Take notice that there will be a full group meeting of the Rock Creek-Cresta Collaborative on Tuesday, February 15, 2000, from 9:00 a.m. to 5:00 p.m. at the PG&E offices, 2740 Gateway Oaks Drive, In Sacramento, California. Expected participants need to give their names to William Zemke (PG&E) at (415) 973–1646 so that they can get through security.

For further information, please contact Elizabeth Molloy at (202) 208–0771.

David P. Boergers,

Secretary.

[FR Doc. 00–3318 Filed 2–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–009]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

February 8, 2000.

Take notice that on February 1, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A Substitute Second Revised Sheet No. 7A, with an effective date of January 1, 2000.

PG&E GT–NW states that this sheet is being filed in compliance with the Commission's January 24, 2000 Letter Order in this Docket.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers, and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http//www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–3309 Filed 2–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–008]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

February 8, 2000.

Take notice that on February 1, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Sixth Revised Sheet No. 7 and Third Revised Sheet No. 7A, with an effective date of February 1, 2000.

PG&E GT–NW states that these sheets are being filed to reflect the implementation of a negotiated rate agreement.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW jurisdictional customers, and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rule and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–3312 Filed 2–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–75–000]

Questar Pipeline Company; Notice of Application

February 4, 2000.

Take notice that on January 27, 2000, Questar Pipeline Company (Applicant) tendered for filing, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) requesting authority to abandon a natural gas transportation agreement provided to Northern Natural Gas Company (Northern) under Applicant's Rate Schedule X–28 to Original Volume No. 3 of Applicant's FERC Gas Tariff, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at *www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

Applicant asserts that Rate Schedule X–28 has been inactive for more than ten years and will not be reactivated. It is further asserted that Northern agrees to the abandonment by evidence of its signature on a letter agreement dated January 5, 2000. Applicant requests an effective date of January 5, 2000, for the abandonment and does not propose to abandon or modify any existing facility in conjunction with this fling. Applicant indicates that any questions regarding this application may be directed to Mr. Alan K. Alred, Manager, Regulatory Affairs and Gas Supply Services, Questar Regulated Services Company, 180 East 100 South, P.O. Box 43560, Salt Lake City, Utah 841–45–0360, (801) 324–5768.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, by or before February 25, 2000, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations (18 CFR 385.214 and 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–3321 Filed 2–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–050]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 8, 2000.

Take notice that On January 31, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to be effective February 1, 2000.

Second Revised Sheet No. 8H

REGT states that the purpose of this filing is to reflect the implementation of a new negotiated rate contract.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–3314 Filed 2–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–287–001]

Texas Gas Transmission Corporation; Notice of Amendment

February 8, 2000.

Take notice that on February 4, 2000, pursuant to Section 7(b) of the Natural Gas Act, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP99–287–001, a Request for Amendment to Abandonment Authorization. Texas Gas requests that the Commission amend its August 26, 1999, Order in the above-captioned proceeding to allow for the abandonment of the White River Storage Field (White River) by Texas Gas by the transfer of its ownership, rather than by retirement in place, as previously approved. Texas Gas' proposal is more fully set forth in the request on file with the Commission and open to public inspection. This request may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance). Texas Gas's contact person for this request is David N. Roberts, Manager, Certificates and Tariffs, at the above address or phone 270–688–6712.

Texas Gas requests that the Commission amend its previous Order to allow for the abandonment of White River by the transfer of its ownership and operation from Texas Gas to SIGCORP Energy Services, LLC (SIGCORP). In addition, it is requested that the Commission find that after that sale, the ownership and operation of the White River by SIGCORP, or its appointed affiliate, will not be under the Commission's jurisdiction.

Texas Gas says that the transfer of the White River by sale to SIGCORP, rather than an abandonment in place, provides various benefits to itself, its customers, and SIGCROP. This transfer by sale will involve the continued use of the existing field, will eliminate the need to plug various wells (10 injection/withdrawal wells and 4 observation wells), and eliminate the need to abandon about 2.3 miles of 6-inch and 1.5 miles of 2-inch pipeline. Further, Texas Gas will not incur the estimated $501,800 of removal cost. However, due to conveyance of the storage field ''as is,'' SIGCORP will obtain about 125,365 Mcf of recoverable cushion/base gas originally costing $23,764. Texas Gas says that the net effect of this request is a savings and an overall cost benefit to Texas Gas's customers.

Additionally, Texas Gas says that the transfer of the White River will provide benefits to the parties that would not be possible should the field be abandoned in place. The acquisition of the storage facility by SIGCORP will complement the current firm transportation capacity held by SIGCORP, and allow for a long-term relationship with the parties in order for gas to be delivered and withdrawn as required by the storage inventory. Furthermore, SIGCORP's commercial and industrial customers in the Southern Indiana region shall benefit with additional security and reliability of gas supply through SIGCORP's use of the storage field. (We note that Texas Gas will provide SIGCORP access to two new taps and build a bidirectional meter station under its Blanket Certificate. SIGCORP will be making a contribution-in-aid to construction for this, not to exceed $350,000.)

Texas Gas has been advised that, following SIGCORP's acquisition of the storage facilities, SIGCORP intends to use the additional capacity provided by the White River in support of its provision of retail natural gas services its customers located exclusively within the State of Indiana. Thus, upon acquisition of the White River, SIGCORP believes this facility will no longer be subject to the Commission's jurisdiction.

Any person desiring to be heard or making any protest with reference to said amendment should on or before February 29, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to take but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this request if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the request is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

David Boergers,

Secretary.

[FR Doc. 00–3317 Filed 2–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–83–000]

Texas Gas Transmission Company; Notice of Technical Conference

February 7, 2000.

In the Commission's order issued on January 12, 2000, the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Thursday, March 2, 2000, at 11 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–3319 Filed 2–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–005]

TransColorado Gas Transmission Company; Notice of Tariff Filing

February 8, 2000.

Take notice that on February 2, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifth Revised Sheet No. 21, to be effective February 1, 2000.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

The tendered tariff sheet revised TransColorado's Tariff to implement a new negotiated-rate transportation service agreement between TransColorado and CIG Resources

Company, that is also being filed, to be effective February 1, 2000.

TransColorado requested waiver of 18 CFR § 154.207 so that the tendered tariff sheet may become effective February 1, 2000.

TransColorado states that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and New Mexico Public Regulatory Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 8888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–3311 Filed 2–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1432–001, et al.]

Kincaid Generation L.L.C., et al. Electric Rate and Corporate Regulation Filings

February 7, 2000.

Take notice that the following filings have been made with the Commission:

1. Kincaid Generation L.L.C, Elwood Energy LLC and Elwood Marketing, LLC

[Docket Nos. ER99–1432–001, ER99–1695–001 and ER99–1465–005]

Take notice that on January 31, 2000, Kincaid Generation, L.L.C., Elwood Energy LLC and Elwood Marketing, LLC, tendered for filing an updated market power analysis. The updated market analysis is required to be filed for Kincaid Generation, L.L.C. at the time in compliance with the Commission's order in Kincaid Generation, L.L.C., 78 FERC ¶ 61,082 (1997). The companies seek leave, however, to file to the updated market analysis on behalf of all three entities in order to coordinate the filing of future market updates.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Southwest Power Pool

[Docket No. ER99–4392–000]

Take notice that on January 31, 2000 Southwest Power Pool, Inc. (SPP), tendered for filing its compliance filing in response to the Commission's December 17, 1999 order. SPP seeks an effective date of February 1, 2000, for the changes contained therein.

Copies of this filing were served on all affected state commissions, all SPP customers, and all parties included on the official service list established in this proceeding.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Company and Kentucky Utilities Company

[Docket No. ER00–1383–000]

Take notice that on January 31, 2000 Louisville Gas and Electric Company (LG&E) and Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an unexecuted unilateral Service Agreement between the Companies and Duke Power under the Companies Rate Schedule MBSS.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1384–000]

Take notice that on January 31, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), submitted a Notice of Cancellation for EnerZ Corporation, a customer under Allegheny Power's Open Access Transmission Service Tariff.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. American Electric Power Service Corporation

[Docket No. ER00–1385–000]

Take notice that on January 31, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing blanket service agreements by the AEP Companies under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff) and letters of assignment under the Power Sales Tariff. The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5. AEPSC respectfully requests waiver of notice to permit the service agreements and assignments to be made effective as specified in the submittal letter to the Commission with this filing.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Ameren Services Company

[Docket No. ER00–1386–000]

Take notice that on January 31, 2000, Ameren Services Company (ASC), tendered for filing an unexecuted Point-to-Point Service Agreement and associated Operating Agreement, between ASC and Wayne-White Counties Electric Cooperative, Inc. ASC asserts that the purpose of the agreements are to permit ASC to provide service over its transmission and distribution facilities to Wayne-White Counties Electric Cooperative, Inc. pursuant to the Ameren Open Access Tariff.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Ameren Services Company

[Docket No. ER00–1387–000]

Take notice that on January 31, 2000, Ameren Services Company (ASC), tendered for filing an unexecuted Network Integration Transmission Service Agreement and associated Network Operating Agreement, between ASC and Soyland Power Cooperative, Inc. ASC asserts that the purpose of the agreements are to permit ASC to provide service over its transmission and distribution facilities to Soyland Power Cooperative, Inc. pursuant to the Ameren Open Access Tariff.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Pool

[Docket No. ER00–1389–000]

Take notice that on January 31, 2000, the New England Power Pool Participants Committee submitted changes to Market Rules and Procedures 11 and 20.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER00–1401–000]

Take notice that on January 31, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-to-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and PECO Energy Company—Power Team.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation

[Docket No. ER00–1402–000]

Take notice that on January 31, 2000, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R 35 (1998), a service agreement (the Service Agreement), under which NYSEG may provide capacity and/or energy to Allegheny Energy Supply Company, LLC in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 3.

NYSEG has requested waiver of the notice requirements so that the Service Agreement becomes effective as of February 1, 2000.

NYSEG has served copies of the filing upon the New York State Public Service Commission and Allegheny Energy Supply Company, LLC.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. West Texas Utilities Company and Central and South West Services, Inc.

Docket No. [ER00–1404–000]

Take notice that on January 31, 2000, West Texas Utilities Company (WTU) and Central and South West Services, Inc. (CSWS), as designated agent for Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and WTU, tendered for filing (1) Interconnection Agreements with Big Country Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc. (Lighthouse), Rio Grande Cooperative, Inc., Southwest Texas Electric Power Cooperative, Inc. and Taylor Electric Cooperative, Inc. (collectively, the Mid-Tex Cooperatives); (2) Service Agreements for ERCOT Ancillary Services under the Open Access Transmission Service Tariff of the CSW Operating Companies (CSW OATT) for each of the customers, except Golden Spread; (3) Service Agreements for ERCOT Regional Transmission Service under the CSW OATT for each of the customers except Golden Spread; (4) Network Integration Transmission Service Agreements with Golden Spread and Lighthouse; (5) Network Operating Agreements with Golden Spread and Lighthouse; and a revised schedule of rates for service under WTU's Wholesale Power Choice Tariff.

WTU seeks an effective date of January 1, 2000 and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on all of the Mid-Tex Cooperatives and on the Public Utility Commission of Texas.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Reliant Energy HL&P

Docket No. [ER00–1413–000]

Take notice that on January 31, 2000, Reliant Energy HL&P (Reliant HL&P), tendered for filing an unexecuted transmission service agreement (TSA) with Tex-La Electric Cooperative of Texas, Inc. for Long-Term Firm Transmission Service under Reliant HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections.

HL&P has requested an effective date for the TSA of January 1, 2000.

Copies of the filing were served on Tex-La and the Public Utility Commission of Texas.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–3308 Filed 2–11–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–39–000, et al.]

PPL Brunner Island, LLC, et al.; Electric Rate and Corporate Regulation Filings

February 4, 2000.

Take notice that the following filings have been made with the Commission:

1. PPL Brunner Island, LLC

[Docket No. EG00–39–000]

Take notice that on February 1, 2000, PPL Brunner Island, LLC filed with the Federal Energy Regulatory Commission a Motion to Defer Consideration of Application for Determination of Status as an Exempt Wholesale Generator and Request for Waiver of Fifteen-Day Answer Period.

Comment date: February 25, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. PPL Holtwood, LLC

[Docket No. EG00–40–000]

Take notice that on February 1, 2000, PPL Holtwood, LLC filed with the Federal Energy Regulatory Commission a Motion to Defer Consideration of Application for Determination of Status as an Exempt Wholesale Generator and Request for Waiver of Fifteen-Day Answer Period.

Comment date: February 25, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. PPL Martins Creek, LLC

[Dcoket No. EG00–41–000]

Take notice that on February 1, 2000, PPL Martins Creek, LLC filed with the Federal Energy Regulatory Commission a Motion to Defer Consideration of Application for Determination of Status as an Exempt Wholesale Generator and Request for Waiver of Fifteen-Day Answer Period.

Comment date: February 25, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. PPL Susquehanna, LLC

[Docket No. EG00–43–000]

Take notice that on February 1, 2000, PPL Susquehanna, LLC filed with the Federal Energy Regulatory Commission a Motion to Defer Consideration of Application for Determination of Status as an Exempt Wholesale Generator and Request for Waiver of Fifteen-Day Answer Period.

Comment date: February 25, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. PPL Montour, LLC

[Docket No. EG00–44–000]

Take notice that on February 1, 2000, PPL Montour, LLC filed with the Federal Energy Regulatory Commission a Motion to Defer Consideration of Application for Determination of Status as an Exempt Wholesale Generator and Request for Waiver of Fifteen-Day Answer Period.

Comment date: February 25, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Morgan Stanley Capital Group Inc., Competitive Utility Services Corp., Texaco Natural Gas Inc., ONEOK Power Marketing Company and Powertec International, LLC

[Docket Nos. ER94–1384–027, ER97–1932–012, ER95–1787–016, ER98–3897–006 and ER96–1–017]

Take notice that on January 27, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

7. Enron Power Marketing, Inc., Portland General Electric Company, Cook Inlet Energy Supply Limited Partnership, Enron Energy Services, Inc., Clinton Energy Management Services, Inc., Lake Benton Power Partners LLC, Storm Lake Power Partners I LLC, Storm Lake Power Partners II LLC, SCC–L1, L.L.C., SCC–L2, L.L.C., SCC–L3, L.L.C. and Green Power Partners I LLC

[Docket Nos. ER94–24–033, ER99–1263–001, ER96–1410–018, ER98–13–013, ER98–3934–006, ER97–2904–003, ER98–4643–001, ER99–1228–001, ER99–1914–002, ER99–1915–002, ER99–1942–002, and ER99–2822–001]

Take notice that on January 14, 2000, Enron Power Marketing, Inc., on behalf of itself and Portland General Electric Company, Cook Inlet Energy Supply Limited Partnership, Enron Energy Services, Inc., Clinton Energy Management Services, Inc., Lake Benton Power Partners LLC, Storm Lake Power Partners I LLC, Storm Lake Power Partners II LLC, SCC–L1, L.L.C., SCC–L2, L.L.C., SCC–L3, L.L.C., and Green Power Partners I LLC (collectively, the Enron Companies), tendered for filing an updated market power study. Each of the Enron Companies is required to file a market power study every three years as a condition of its market-based rate authority. In order to avoid duplicative filings, the Enron Companies are submitting a single market-power study. The study finds that none of the Enron Companies possess market power in any generation market.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Thicksten Grimm Burgum, Incorporated, Monterey Consulting Associates Incorporated and Sparc, L.L.C.

[Docket Nos. ER96–2241–014, ER96–2143–013 and ER98–2671–004]

Take notice that on January 21, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

9. New York Independent System Operator, Inc., Central Hudson Gas & Electric Corp., Consolidated Edison Company, of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation Orange & Rockland Utilities, Inc. and Rochester Gas & Electric Corp.

[Docket Nos. ER97–1523–024, ER97–4234–020 and OA97–470–022 (Not consolidated)]

Take notice that on January 28, 2000 the New York Independent System Operator, Inc. (NYISO) submitted a compliance filing in the above-referenced proceeding consisting of a Revised Installed Capacity Auction Description.

The NYISO requests an effective date of March 15, 2000.

A copy of this filing was served upon all persons on the Commission's official service lists in Docket Nos. ER97–1523–000, OA97–470–000 and ER97–4234–000 (not consolidated), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. FPL Energy Power Marketing, Inc.

[Docket No. ER98–3566–005]

Take notice that on January 27, 2000, FPL Energy Power Marketing, Inc. filed their quarterly report for the quarter ending December 31, 1999, for information only.

11. New Energy Partners, L.L.C., NEV Midwest, L.L.C., NEV California, L.L.C., PP&L Energy Plus Co., LLC, Southern Energy Retail Trading and Marketing, Inc., CMS Marketing, Services and Trading Company, Southern Energy Trading and Marketing, Inc., NEV East, L.L.C., Southern Company Energy Marketing L.P., Merchant Energy Group of the Americas, Inc., Southern Energy California, L.L.C., New Energy Ventures, Inc., OST Energy Trading Inc., Tractebel Energy Marketing, Inc., Tenaska Power Services Co. and CMS Marketing, Services and Trading

Docket Nos. ER99–1812–005, ER97–4654–009, ER97–4653–009, ER99–3606–002, ER98–1149–006, ER96–2350–021, ER95–976–019, ER97–4652–009, ER97–4166–007, ER98–1055–009, ER99–1841–003, ER97–4636–009, ER96–553–017, ER94–142–025, ER94–389–022 and ER96–2350–022]

Take notice that on January 28, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

12. New England Power Pool

[Docket No. ER99–4531–000]

Take notice that on February 1, 2000, New England Power Pool (NEPOOL) filed a final status report update to their September 27, 1999 Compliance Report in the above-captioned docket.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Pool

[Docket No. ER99–4536–002]

Take notice that on January 24, 2000, the New England Power Pool (NEPOOL) Participants Committee submitted three revised Market Rules and Procedures in compliance with the Commission's November 23, 1999 order in Docket Nos. ER99–4536–000 and ER99–4591–000 (89 FERC 61,209), to be effective for all NEPOOL market transactions occurring between September 28, 1999 and December 31, 1999.

The NEPOOL Participants Committee states that copies of these materials were sent to all entities on the service lists in Docket Nos. ER99–4536–000 and ER99–4591–000 and to all participants in the New England Power Pool, the New England state governors and regulatory commissions.

Comment date: February 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER99–4545–004]

Take notice that on January 27, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Market Notice which was sent to Market Participants on January 24, 2000 and posted on the ISO Home Page. The Market Notice specifies that portions of Amendment No. 22 to the ISO Tariff relating to revised Existing Transmission Contract and Firm Transmission Right scheduling templates, the creation of a new Congestion Management Zone (ZP26), and implementation of a new methodology for allocating Transmission Losses to Utility Distribution Companies will become effective on January 31, 2000 for Trading Day February 1, 2000.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. ISO New England Inc.

[Docket No. ER00–395–002]

Take notice that on January 31, 2000, ISO New England Inc., tendered for filing revisions to its Tariff for Transmission Dispatch and Power Administration Services in compliance with Commission's December 30, 1999 Order in this Docket.

Copies of said filing have been served upon all parties to this proceeding, upon NEPOOL Participants and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the utility regulatory agencies of the six New England States.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. SmartEnergy.com, Inc.

[Docket No. ER00–140–001]

Take notice that on January 28, 2000, SmartEnergy.com, Inc. filed their quarterly report for the quarter ending December 31, 1999 for information only.

17. Central Maine Power Company

[Docket No. ER00–604–002]

Take notice that on January 27, 2000, in response to Central Maine Power Company, 90 FERC ¶ 61,014 (2000), and pursuant to Rule 35.13 of the Rules of Practice and Procedure, 18 CFR 35.13, of the Federal Energy Regulatory Commission (FERC or Commission), Central Maine Power Company (CMP) submitted a ''Compliance Filing,'' which revises CMP's Short-Term Interconnection Agreement with Gorbell/Thermo Electron Power Company.

CMP states that copies of the filing have been sent to persons identified on the official service list in this proceeding.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Constellation Power Source, Inc.

[Docket No. ER00–607–001]

Take notice that on January 28, 2000, Constellation Power Source, Inc. filed their quarterly report for the quarter ending December 31, 1999, for information only.

19. Northeast Utilities Service Company

[Docket No. ER00–794–000]

Take notice that on January 31, 2000, Northeast Utilities Service Company (NUSCO), tendered for filing a correction to the Service Agreement for Network Integration Transmission Service to The Connecticut Light and Power Company under the NU System Companies' Open Access Transmission Service Tariff No. 9.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Alrus Consulting, LLC

[Docket No. ER00–861–000]

Take notice that on February 1, 2000, Alrus Consulting, LLC (Alrus), tendered for filing, an Amended Petition with the Federal Energy Regulatory Commission (Commission) for acceptance of Alrus Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. Alrus also requested waiver of the 60-day prior notice requirement to allow Alrus Rate Schedule FERC No. 1 to become effective January 15, 2000.

Alrus intends to engage in wholesale electric power and energy purchases and sales as a marketer. Alrus is not in the business of generating or transmitting electric power. Alrus is a Nevada limited liability corporation with its principal place of business in Reno, Nevada. Alrus is involved in a wide range of consulting services with a special emphasis on utility businesses and services.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. FPL Energy Maine Hydro, Inc., FPL Energy Mason, LLC, FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC and FPL Energy AVEC, LLC

[Docket No. ER00–1297–000, ER00–1298–000, ER00–1299–000, ER00–1300–000 and ER00–1301–000]

Take notice that on January 27, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Louisville Gas and Electric Company/Kentucky Utilities

[Docket No. ER00–1303–000]

Take notice that on January 27, 2000, Louisville Gas and Electric Company/Kentucky Utilities filed their quarterly report for the quarter ending December 31, 1999.

Comment date: February 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Nevada Power Company

[Docket No. ER00–1325–000]

Take notice that on January 28, 2000, Nevada Power Company tendered for

filing pursuant to 18 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Cancellation of Agreement for Supplemental Power Service Between Nevada Power Company and Valley Electric Company.

This Notice of Cancellation is filed pursuant to the notice of termination of the Agreement for Supplemental Power Service given pursuant to the terms of the agreement to Nevada Power Company by Valley Electric Company.

Copies of the filing were served upon Valley Electric Company, the Public Utilities Commission of Nevada and the Nevada Attorney General's Bureau of Consumer Protection.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Southern California Edison Company

[Docket No. ER00–1326–000]

Take notice that on January 28, 2000, Southern California Edison Company (SCE), tendered for filing a new tariff, Resale of Firm Transmission Rights Tariff (FTRs Resale Tariff). Pursuant to the Commission's November 10, 1999 Order in Docket No. ER98–3594–000, the FTRs Resale Tariff provides for the resale of firm transmission rights (FTRs) procured by SCE.

SCE requests waiver of the prior notice requirement of Section 35.3 of the Commission's regulations to permit the FTRs Resale Tariff to be effective on the date the Commission accepts the new tariff for filing.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Ameren Services Company

[Docket No. ER00–1327–000]

Take notice that on January 28, 2000, Ameren Services Company (ASC) , tendered for filing a Service Agreement for Market Based Rate Power Sales between Ameren Energy, Inc. (AE) and Morgan Stanley Capital Group Inc. (MSCG). ASC asserts that the purpose of the Agreement is to permit AE to make sales of capacity and energy to MSCG pursuant to Ameren's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Ameren Services Company

[Docket No. ER00–1328–000]

Take notice that on January 28, 2000, Ameren Services Company (ASC), tendered for filing a Service Agreement for Market Based Rate Power Sales between Ameren Energy, Inc. (AE) and Soyland Power Cooperative, Inc. (Soyland). ASC asserts that the purpose of the Agreement is to permit AE to make sales of capacity and energy to Soyland pursuant to Ameren's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Ameren Services Company

[Docket No. ER00–1329–000]

Take notice that on January 28, 2000, Ameren Services Company (ASC), tendered for filing a Service Agreement for Market Based Rate Power Sales between Ameren Energy, Inc. (AE) and Clay Electric Co-operative, Inc. (Clay). ASC asserts that the purpose of the Agreement is to permit AE to make sales of capacity and energy to Clay pursuant to Ameren's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Commonwealth Edison Company

[Docket No. ER00–1330–000]

Take notice that on January 28, 2000, Commonwealth Edison Company (ComEd), tendered for filing a Notice of Cancellation for the Service Agreement No. 362 between ComEd and Wisconsin Electric Power Company (WEPCO), specifically, Service Agreement No. 362 for Firm Point-to-Point Transmission Service under ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of January 1, 2000, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on WEPCO.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Rochester Gas and Electric Corporation, PacifiCorp, Florida Power Corporation, Sunlaw Energy Partners I, L.P., PP&L Montana, LLC, Southern Energy Kendall, L.L.C., Southern Energy Potrero, L.L.C., Southern Energy Delta, L.L.C., State Line Energy, L.L.C., Southern Energy New England, L.L.C., Southern Energy Canal, L.L.C., Duke Power, a division of Duke Energy Corporation, and Penobscot Hydro, LLC

[Docket Nos. ER00–1331–000, ER00–1332–000, ER00–1333–000, ER00–1334–000, ER00–1336–000, ER00–1337–000, ER00–1338–000, ER00–1339–000, ER00–1340–000, ER00–1341–000, ER00–1342–000, ER00–1343–000, and ER00–1344–000]

Take notice that on January 28, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. PG Power Sales Four, L.L.C.

[Docket No. ER00–1359–000]

Take notice that, on January 28, 2000, PG Power Sales Four, L.L.C. tendered for filing, initial FERC electric service tariff, Rate Schedule No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. PG Power Sales Five, L.L.C

[Docket No. ER00–1360–000]

Take notice that, on January 28, 2000, PG Power Sales Five, L.L.C. tendered for filing initial FERC electric service tariff, Rate Schedule No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Phelps Dodge Energy Services, LLC, Consumers Energy Company, Niagara Mohawk Energy Marketing, Inc., Allegheny Energy Supply Company, LLC, Allegheny Energy Unit I and Unit 2, LLC, West Penn Power Company, d/b/a/ Allegheny Energy, Duke Energy Morro Bay, LLC, Duke Energy Morro Bay, LLC, Duke Energy Moss Landing, LLC, Duke Energy Moss Landing, LLC, Duke Energy Oakland, LLC, Duke Energy Oakland, LLC, Duke Energy South Bay, LLC, Duke Energy South Bay, LLC, SEI Wisconsin, L.L.C., Milford Power Limited Partnership, and Arizona Public Service Company

[Docket Nos. ER00–1345–000, ER00–1346–000, ER00–1347–000, ER00–1348–000, ER00–1349–000, ER00–1350–000, ER00–1351–000, ER00–1352–000, ER00–1353–000, ER00–1354–000, ER00–1355–000, ER00–1356–000, ER00–1357–000, ER00–1358–000, ER00–1367–000, ER00–1369–000, and ER00–1371–000]

Take notice that on January 28, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. PG Power Sales Six, L.L.C.

[Docket No. ER00–1361–000]

Take notice that, on January 28, 2000, PG Power Sales Six, L.L.C. tendered for filing initial FERC electric service tariff, Rate Schedule No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. PG Power Sales Seven, L.L.C

[Docket No. ER00–1362–000]

Take notice that, on January 28, 2000, PG Power Sales Seven, L.L.C. tendered for filing initial FERC electric service tariff, Rate Schedule No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. PG Power Sales Eight, L.L.C

[Docket No. ER00–1363–000]

Take notice that, on January 28, 2000, PG Power Sales Eight, L.L.C. tendered for filing initial FERC electric service tariff, Rate Schedule No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. PG Power Sales Nine, L.L.C.

[Docket No. ER00–1364–000]

Take notice that, on January 28, 2000, PG Power Sales Nine, L.L.C. , tendered for filing initial FERC electric service tariff, Rate Schedule No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

37. California Independent System Operator Corporation

[Docket No. ER00–1365–000]

Take notice that on January 28, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a proposed amendment (Amendment No. 26) to the ISO Tariff. Amendment No. 26 modifies procedures governing the notice provided by the ISO to Scheduling Coordinators that a specific Reliability Must-Run (RMR) Unit will be required to provide Energy for reliability purposes during the next day. The ISO states that the amendment is intended to eliminate market distortions and operational problems that are caused by the current timing of notices. The amendment also includes modifications of the requirements for scheduling RMR units and of the procedures for the selection of payment options for the Energy provided that the ISO states are necessary to achieve the intended purpose of the modification in timing.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, the owners of RMR Units, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. The ISO also states that the tariff amendments were presented to the owners of RMR Units more than 10 business days before the filing of Amendment No. 26.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

38. Cinergy Services, Inc.

[Docket No. ER00–1366–000]

Take notice that on January 28, 2000, PSI Energy, Inc. (PSI), tendered for filing the Transmission and Local Facilities (T&LF) Agreement Calendar Year 1998 Reconciliation between PSI and Wabash Valley Power Association, Inc. (WVPA), and between PSI and Indiana Municipal Power Agency (IMPA). The T&LF Agreement has been designated as PSI's Rate Schedule FERC No. 253.

Copies of the filing were served on Wabash Valley Power Association, Inc., the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

39. Cinergy Services, Inc.

[Docket No. ER00–1368–000]

Take notice that on January 28, 2000, Cinergy Services, Inc. (Cinergy), on behalf of its affiliated Operating Companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (Cinergy Operating Companies) submitted for approval a multi-year Confirmation Letter between Cinergy and TransAlta Energy Marketing (US) Inc. (TEMUS), under which the Cinergy Operating Companies intend to make four yearly sales of market-based power to TEMUS pursuant to Cinergy's long-term market-based power sales Service Agreement with TEMUS, which was previously accepted for filing in Docket No. ER99–3955–000.

Cinergy requests an effective date of January 1, 2000 for its Confirmation Letter.

Cinergy states that it has served a copy of its filing upon TEMUS.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

40. Cinergy Services, Inc.

[Docket No. ER00–1370–000]

Take notice that on January 28, 2000, Cinergy Services, Inc. (Cinergy), on behalf of its affiliated Operating Companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (Cinergy Operating Companies) tendered for approval certain sequential Confirmation Letters between Cinergy and CNG Energy Services Corporation (CNG), under which the Cinergy Operating Companies intend to make yearly sales of market-based power to CNG pursuant to Cinergy's long-term market-based power sales Service Agreement with CNG, dated December 12, 1997, and which was previously accepted for filing in Docket No. ER98–1716–000. Since Cinergy consented to the assignment by CNG of its liabilities and obligations in relation to the Service Agreement and the Confirmation Letters to Entergy Power Marketing Corp.,

Cinergy's power sales transactions referenced by the Confirmation Letters are to Entergy Power Marketing Corp.

Cinergy requests an effective date of January 1, 2000 for its Confirmation Letters.

Cinergy states that it has served a copy of its filing upon Entergy Power Marketing Corp. and Ormet Primary Aluminum Corporation.

Comment date: February 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

41. Midwest Generation, LLC

[Docket No. ER00–1378–000]

Take notice that on January 31, 2000, Midwest Generation, LLC , tendered for filing under its market-based rate tariff three long-term service agreements with Commonwealth Edison Company.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

42. Ameren Services Company

[Docket No. ER00–1379–000]

Take notice that on January 31, 2000, Ameren Services Company (ASC), tendered for filing an unexecuted Network Integration Transmission Service Agreement and associated Network Operating Agreement, between ASC and Clay Electric Cooperative, Inc. ASC asserts that the purpose of the agreements are to permit ASC to provide service over its transmission and distribution facilities to Clay Electric Cooperative, Inc. pursuant to the Ameren Open Access Tariff.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

43. FirstEnergy System

[Docket No. ER00–1380–000]

Take notice that on January 31, 2000, FirstEnergy System tendered for filing Service Agreements to provide Firm Point-to-Point Transmission Service for American Municipal Power-Ohio, Inc., Cinergy Services, Inc., The Detroit Edison Company, Cargil—Alliant, LLC, and FirstEnergy Corporation, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective dates under these Service Agreements are January 01, 2000 for the above mentioned Service Agreements in this filing.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

44. New England Power Pool

[Docket No. ER00–1392–000]

Take notice that on January 31, 2000, the New England Power Pool (NEPOOL) Participants Committee, tendered for filing a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Champion International Corporation (Champion). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of Champion's signature page would permit NEPOOL to expand its membership to include Champion. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Champion a member in NEPOOL.

The Participants Committee requests an effective date of February 1, 2000, for commencement of participation in NEPOOL by Champion.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

45. New England Power Pool

[Docket No. ER00–1393–000]

Take notice that on January 31, 2000, the New England Power Pool (NEPOOL) Participants Committee , tendered for filing a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Tiverton Power Associates Limited Partnership (Tiverton). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of Tiverton's signature page would permit NEPOOL to expand its membership to include Tiverton. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Tiverton a member in NEPOOL.

The Participants Committee requests an effective date of February 1, 2000, for commencement of participation in NEPOOL by Tiverton.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

46. Central and South West Services

[Docket No. ER00–1414–000]

Take notice that on January 31, 2000, Central and South West Services, Inc. (CSWS), as designated agent for Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company, tendered for filing a Service Agreement for ERCOT Ancillary Services under the Open Access Transmission Service Tariff of the CSW Operating Companies (the CSW OATT) with Tex-La Electric Power Cooperative of Texas, Inc. (Tex-La) and a Service Agreement for ERCOT Regional Transmission Service under the CSW OATT with Tex-La.

CSWS seeks an effective date of January 1, 2000 and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on Tex-La and on the Public Utility Commission of Texas.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

47. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER00–1415–000]

Take notice that on January 31, 2000, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies) tendered for filing: (i) an executed Network Service Agreement (NSA) between the CSW Operating Companies and Public Service Company of Oklahoma and Southwestern Electric Power Company (PSO/SWEPCO); (ii) an executed Network Operating Agreement (NOA) between the CSW Operating Companies and PSO/SWEPCO; (iii) an executed NSA between the CSW Operating Companies and Central Power and Light Company and West Texas Utilities Company (CPL/WTU); (iv) an executed NOA between the CSW Operating Companies and CPL/WTU; and (v) an unexecuted service agreement under which the CSW Operating Companies will provide transmission service to CPL/WTU.

The CSW Operating Companies request a January 1, 2000 effective date for the agreements.

The CSW Operating Companies state that a copy of this filing has been served on PSO/SWEPCO, CPL/WTU, the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

48. Consumers Energy Company

[Docket No. ES98–31–000]

Take notice that on January 31, 2000 Consumers Energy Company filed a request for waiver of the Commission's competitive bid or negotiated placement requirements of 18 CFR 34.2 with regard to guarantees for loans for purchase and/or installation of equipment related to the provision of energy, which guarantees would be made pursuant to authorization already granted in this docket.

Comment date: February 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–3307 Filed 2–11–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

February 8, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI00–2–000.

c. *Date Filed:* December 3, 1999.

d. *Applicant:* Garkane Power Association, Inc.

e. *Name of Project:* Glen Canyon-Paria Transmission Project.

f. *Location:* In Kane County, Utah, and Coconino County, Arizona. The project occupies lands of the United States managed by the Department of the Interior's Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. *Applicant Contact:* Mr. Michael Avant, Engineering Manager, Garkane Power Association, Inc., 1802 South 175 East, Kanab, Utah 84741 (435) 644–5026, and Glen L. Ortman, Esq., Adrienne E. Clair, Esq., Verner, Liipfert, Benhard, McPherson and Hand, Chartered, 901 15th Street, NW, Suite 700, Washington, DC 20005–6000, (202) 371–6000.

i. *FERC Contact:* Any questions on this notice should be addressed to Etta Foster at (202) 219–2679, or e-mail address: *etta.foster@ferc.fed.us.*

j. *Deadline for filing comments and or motions:* March 13, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the docket number (DI00–2–000) on any comments or motions filed.

k. *Description of Project:* The existing project works consists of: a 138-kilovolt transmission line, extending about 36.1 miles from the Bureau of Reclamation's Glen Canyon Dam Powerhouse Switchyard to Garkane Power Association, Inc.'s Paria Substation, and apapurtenant facilities.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–3316 Filed 2–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

February 8, 2000.

Take notice the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Minor License.

b. *Project No.:* P–2694–002.

c. *Date filed:* September 27, 1999.

d. *Applicant:* Nantahala Power and Light.

e. *Name of Project:* Queens Creek Hydroelectric Project.

f. *Location:* On Queens Creek , near the town of Topton, in Macon County, North Carolina. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Thomas D. Smitherman; Vice President: Production, Transmission, and Distribution; 301 NP&L Loop Road; Franklin, NC 28734; (828) 369–4514.

i. *FERC Contact:* Kevin Whalen (202) 219–2790, kevin.Whalen@ferc.fed.us.

j. *Deadline for filing interventions and protests:* April 14, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary; Federal Energy Regulatory Commission; 888 First Street, NE; Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments

or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) a 78-foot-high, 382-foot-long earth-faced rock fill dam; (2) a 4-foot-wide by 4-foot-high horizontal intake structure, having a trashrack with 1.0-inch clear bar spacing; (3) a 6,250-foot-long steel penstock leading to a concrete and steel powerhouse containing a single generating unit, having an installed capacity of 1,440 kilowatts; (4) a 37-acre impoundment that extends approximately 0.7 miles upstream; and (5) appurtenant facilities. The applicant estimates the total average annual generation would be approximately 5,000 megawatt hours.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 00–3322 Filed 2–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: February 7, 2000, 65 FR 5866.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 9, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket No. has been added to Item CAE–15 on the Agenda scheduled for the February 9, 2000 meeting:

Item No.	Docket No. and company
CAE–15 ...	EL00–41–000, PJM Interconnection L.L.C.

David P. Boergers,

Secretary.

[FR Doc. 00–3432 Filed 2–9–00; 4:27 pm]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $1,368,143.60, plus accrued interest, in refined petroleum overcharges obtained by the DOE under the terms of remedial and consent orders with respect to Bi-Petro Refining Company, Inc., *et al.*, Case Nos. VEF–0035, *et al.* The OHA has tentatively determined that the funds will be distributed in accordance with the provisions of 10 CFR part 205, Subpart V and 15 U.S.C. § 4501, the Petroleum Overcharge Distribution and Restitution Act (PODRA).

DATE AND ADDRESS:

Comments must be filed in duplicate on or before March 15, 2000 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585–0107. All comments should display a reference to Case Nos. VEF–0035, *et al.*

FOR FURTHER INFORMATION CONTACT: Dawn L. Goldstein, Staff Attorney, Office of Hearings and Appeals, 1000 Independence Ave. SW, Washington, DC 20585–0107; (202) 426–1527, Dawn.Goldstein@hq.doe.gov.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR § 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $1,368,143.60, plus accrued interest, obtained by the DOE under the terms of Remedial Orders and Consent Orders regarding Bi-Petro Refining Company, Inc., *et al.* Under the Remedial Orders, companies were found to have violated the Federal petroleum price and allocation regulations involving the sale of refined petroleum products during the relevant audit periods. The Consent Orders resolved alleged violations of these regulations.

The OHA has proposed to distribute the funds in a two-stage refund proceeding. Purchasers of certain covered petroleum products from any one of the firms considered in the

proceeding will have an opportunity to submit refund applications in the first stage. Refunds will be granted to applicants who satisfactorily demonstrate they were injured by the pricing violations and who document the volume of certain refined petroleum products they purchased from one of the firms during the relevant audit periods. In the event that money remains after all first-stage claims have been disposed of, the remaining funds will be disbursed in accordance with the provisions of 15 U.S.C. § 4501, the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA).

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to forward two copies of their submissions, within 30 days of publication of this notice in the **Federal Register**, to the address set forth at the beginning of this notice. Comments so received, will be made available for public inspection between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays, in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, Washington, D.C.

Dated: Date: January 21, 2000

George B. Breznay,

Director, Office of Hearings and Appeals.

PROPOSED DECISION AND ORDER

January 21, 2000.

Department of Energy; Washington, DC 20585.

Implementation of Special Refund Procedures

Names of Firms: Bi-Petro Refining Co., Inc., *et al.*

Dates of Filing: October 19, 1999, *et al.*

Case Numbers: VEF–0035, *et al.*

On October 19, 1999, the Office of General Counsel (OGC) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through the payments resulting from Remedial Orders and Consent Orders (Remedial Order and Consent Order funds) regarding nine covered petroleum product refiners, retailers and resellers, pursuant to 10 CFR Part 205, Subpart V. This Proposed Decision sets forth the OHA's tentative plan for distributing these funds to qualified refund applicants. Since the procedures set forth in this Decision are in proposed form, no refund applications should be filed at this time. A final determination will be issued at a later date announcing that the filing of refund applications is authorized.

I. Proposed Refund Procedures

A. Eligibility for Refunds

To the extent possible, the amounts collected, plus accrued interest, will be distributed to purchasers of certain covered refined products described in the Appendix who can show that they were injured by these nine firms' pricing practices during the periods also described in the Appendix.

B. Calculation of Refund Amount

We propose adopting a volumetric method to apportion these funds. Under this volumetric refund approach, a claimant's allocable share of the Remedial Order and Consent Order funds is equal to the number of gallons of certain covered petroleum products purchased during the time period specified in the Appendix, multiplied by a per gallon refund amount. In the interest of the expeditious distribution of the collected funds, as it is near the end of our Subpart V refund proceedings, and based upon our previous experience in these refined product Subpart V proceedings, we have set the per gallon refund amount at $.0004 per gallon.[1] This figure will be reduced by the collection percentage, to obtain the volumetric. If the collection percentage is 100 percent or greater, the volumetric will not be reduced.

Thus, under the volumetric approach and using the information listed in the Appendix, an eligible claimant will receive a refund equal to the number of gallons of certain covered petroleum products that it purchased from one of the nine firms during the relevant period, multiplied by the volumetric for each firm.

As in previous cases, we will establish a minimum amount of $15 for refund claims. *E.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). Because we are nearing the end of our Subpart V proceedings, we will also set a deadline to submit applications of six months from the publication date of our final Implementation Order in the **Federal Register**.

C. Showing of Injury

We propose that each claimant will be required to document its purchases of the relevant covered petroleum products from the firms at issue during the relevant period. In addition, we propose that in order to receive a refund, an applicant generally must demonstrate through the submission of detailed evidence that it did not pass on the alleged overcharges to its customers. *See, e.g., Office of Enforcement,* 8 DOE ¶ 82,597 at 85,396–97 (1981).

However, as we have done in many prior refund cases, we propose to adopt specific injury presumptions that will simplify and streamline the refund process for some categories of customers: small claims, end-users, consignees, regulated firms and cooperatives. These presumptions will excuse members of certain applicant categories from proving that they were injured by the firms' alleged overcharges, and are discussed below.

D. Reseller Applicants Seeking Refunds of $10,000 or Less

We propose to adopt a presumption, as we have in many previous cases, that resellers seeking small refunds were injured by these firms' pricing practices. *See, e.g., E.D.G., Inc.*, 17 DOE ¶ 85,679 (1988). We recognize that the cost to the applicant of gathering evidence of injury to support a small refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. Therefore, we are proposing a small claims threshold of $10,000. *See Enron Corp.*, 21 DOE ¶ 85,323 at 88,957 (1991).

Accordingly, under the proposed small claims presumption in this proceeding, a claimant who claims a refund of $10,000 or less will not be required to submit any evidence of injury beyond establishing that it is one of the eligible customers that purchased covered petroleum products from one of the nine firms. We propose that a reseller applicant must follow the procedures that are outlined below if the applicant is seeking a refund in excess of $10,000.

E. Medium-Range Presumption

We propose that in lieu of making a detailed showing of injury, a reseller, retailer or refiner claimant whose allocable share of the collected funds for purchases of covered petroleum products from one of the nine firms exceeds $10,000 may elect to receive as its refund the larger of $10,000 or 40 percent of its allocable share up to $50,000. The use of this presumption reflects our conviction that these claimants were likely to have experienced some injury as a result of the alleged overcharges. In other proceedings, we have determined that a 40 percent presumption for the medium-range purchasers reflected the amount of their injury as a result of their purchases of those products. *Gulf Oil Corp.*, 16 DOE ¶ 85,381 (1987). Accordingly, a claimant in this group will only be required to provide documentation of its purchase volumes of covered petroleum products from these firms in order to be eligible to receive a refund of 40 percent of its total allocable share up to $50,000.

F. Reseller Applicants Seeking Larger Refunds

We propose that if a retailer, reseller or refiner claims an amount in excess of $10,000, and declines to accept the medium-range presumption, it will be required to provide a detailed demonstration of its injury. We propose that it will be required to demonstrate that it maintained a ''bank'' of

[1] Nevertheless, we realize that the impact on an individual claimant may have been greater than the volumetric amount. We therefore propose that the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharges that it incurred in order to be eligible for a larger refund. *E.g., Standard Oil Co./Army and Air Force Exchange Service,* 12 DOE ¶ 85,015 (1984). In addition, we note that we may need to lower the volumetric for a particular proceeding, if the volume claimed by applicants multiplied by the volumetric indicates that if all volume were claimed, the fund would be exhausted or insufficient to satisfy all claims. We may also need to lower a particular volumetric if it appears inappropriate, based on our experience in these cases.

[2] The collection percentage will be calculated by dividing the amount collected (with interest accrued by the DOE up to roughly the issuance of the final Implementation Order) by the amount the firm was either ordered to pay in a Remedial Order or agreed to pay in a Consent Order.

unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. In addition, we propose that a claimant must show that market conditions would not permit it to pass through those increased costs. *See, e.g., Quintana Energy Corp.,* 21 DOE ¶ 85,032 at 88,117 (1991). If a reseller that is eligible for a refund in excess of $10,000 elects not to submit the cost bank and purchase price information described above, it may still apply either for the small claims refund of $10,000 or the medium-range presumption, whichever amount is more beneficial for the applicant.

G. End-Users

We propose to adopt a presumption that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry, were injured by these firms' alleged overcharges and are entitled to their full share of the monies collected from these firms. Unlike regulated firms in the petroleum industry, end-users were not subject to price controls during the relevant periods. Moreover, these unregulated firms were not required to keep records that justified selling price increases by reference to cost increases. Therefore, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See, e.g., American Pacific International, Inc.*, 14 DOE ¶ 85,158 at 88,294 (1986). We propose, therefore, that any applicant claiming to be an end-user, need only establish that it was a customer of one of these firms or a successor thereto and that the nature of its business made it an ultimate consumer of the covered petroleum products that it purchased. If an applicant establishes those two facts, it will receive its full pro-rata share as its refund without making a detailed demonstration of injury.

H. Regulated Firms and Cooperatives

We propose that regulated firms (such as public utilities) and agricultural cooperatives, which are required to pass on to their customers the benefit of any refund received, will be exempted from the requirement that they make a detailed showing of injury. *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,515 (1986); *see also Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We will require a regulated firm or cooperative to establish that it was a customer of one of the firms or a successor thereto. In addition, we will require each such claimant to certify that it will pass any refund received through to its customers, to provide us with a full explanation of the manner in which it plans to accomplish this restitution to its customers and to notify the appropriate regulatory or membership body of the receipt of the refund money. If a regulated firm or cooperative meets these requirements, it will receive a refund equal to its full pro-rata share. However, any public utility claiming a refund of $10,000 or less, or accepting the medium-range presumption of injury, will not be required to submit the above referenced certifications and explanation. A cooperative's sales of covered petroleum products to non-members will be treated in the same manner as sales by other resellers or retailers.

I. Indirect Purchasers

We propose that firms which made indirect purchases of covered petroleum products from one of the firms during the relevant period may also apply for refunds. If an applicant did not purchase directly from one of the firms, but believes that the covered petroleum products it purchased from another firm were originally purchased from one of the firms at issue, the applicant must establish the basis for its belief and identify the reseller from whom the covered petroleum products were purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of one of the nine firms' products passed through these firms' alleged overcharges to its own customers. *E.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,451–52 (1986).

J. Spot Purchasers

We propose to adopt the rebuttable presumption that a claimant who made only spot purchases from one of the firms was not injured as a result of those purchases. A claimant is a spot purchaser if it made only sporadic purchases of significant volumes of covered petroleum products from one of the firms. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from one of these firms. *E.g., Office of Enforcement,* 8 DOE ¶ 82,597 at 85,396–97 (1981).

K. Applicants Seeking Refunds Based on Allocation Claims

We also recognize that we may receive claims alleging these firms' failure to furnish petroleum products that they were obliged to supply under the DOE allocation regulations that became effective in January 1974. *See* 10 CFR Part 211. Any such application will be evaluated with reference to the standards we set forth in Subpart V implementation decisions such as *Office of Special Counsel,* 10 DOE ¶ 85,048 at 88,220 (1982), and refund application cases such as *Mobil Oil Corp./ Reynolds Industries, Inc.*, 17 DOE ¶ 85,608 (1988). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the firm at issue and the likelihood that the firm at issue failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR Part 211. In addition, the claimant should provide evidence that it sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the DOE's (or its predecessor's) treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that the firm may have had to the alleged allocation violation. In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than the firm at issue. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the amount of the firm's allocation violations in general and regarding the specific allocation violation alleged by the claimants. We will also pro rate any allocation refunds that would otherwise be disproportionately large in relation to the funds collected. *Cf. Amtel, Inc./Whitco, Inc.*, 19 DOE ¶ 85,319 (1989).

L. Consignees

We will adopt a rebuttable level of injury presumption of 10 percent for all consignees of the instant firms during the relevant periods. *See Gulf Oil Corp.*, 16 DOE ¶ 85,381 (1987). Accordingly, a consignee may elect to receive a refund based on 10 percent of its total allocable share. Any consignee applicant will be free to rebut this presumption and prove a greater injury in order to receive a larger refund.

II. Distribution of the Remainder of the Firms' Consent Order Funds

In the event that money remains after all refund claims from the collected monies have been analyzed, those funds in those accounts will be disbursed as indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–4507 (1988). Pursuant to the PODRA, the excess funds will be distributed to state governments for use in energy conservation programs.

III. Conclusion

Applications for Refund should not be filed at this time. Detailed procedures for filing Applications for Refund will be provided in a final Decision and Order. Before distributing any portion of the collected funds, we will publicize the distribution process, and provide an opportunity for any potential claimants to file a claim. Comments regarding the tentative distribution process set forth in this Proposed Order should be filed with the Office of Hearings and Appeals within 30 days of the publication of this Proposed Order in the **Federal Register**.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by the nine firms listed in the Appendix will be distributed in accordance with the foregoing decision.

APPENDIX

Name of firm, primary operating location or headquarters location	OHA case No.	Consent order tracking system No. (COTS)	Type of business	Covered products	Applicable dates*	Amounts				
						Agreed to or ordered	Actual payment principal	With interest through 11/30/99	Tentative collection percentage	Tentative volumetric
South Central Terminal Co., Inc., f/k/a Bi-Petro Refining Co., Inc. P.O. Box 3245, Springfield, IL 62708.	VEF–0035	720S00565W	refiner	gasoline	July 1978–Dec. 1979.	$236,242.00	$167,287.26	$215,743.30	91	0.00036
Don Rettig/Don's Shell 1097 W. Tennyson Rd., Hayward, CA 94544.	VEF–0037	999K90058W	retailer	gasoline	Aug. 1979–April 1980.	4,208.40	1,800.00	3,910.64	93	0.00037
Gugino's Exxon 25th and Pine St., Niagara Falls, NY 14301.	VEF–0040	999K90074W	retailer	gasoline	Aug.–Sept. 1979.	1,772.00	530.00	1,103.7	62	0.00025
J.D. Streett & Company, Inc. 144 Weldon Parkway, M.D. Heights, MO 63043.	VEF–0042	720H00555W	reseller-retailer	all covered products.	Aug. 1973–Jan. 1981.	400,000.00	532,362.00	710,840.11	178	**** 0.00040
McWhirter Distributing Co., Inc. 6633 Valjean Ave., Van Nuys, CA 91406.	VEF–0045	930H00291W	reseller-retailer	gasoline	April–Sept. 1979.	128,171.06	26,840.00	29,227.86	23	0.00009
Charles B. Luna, formerly d/b/a/ Ozark County Gas Co. P.O. Box 1339, Branson, MO 65616.	VEF–0046	720H00606W	reseller-retailer	all covered products.	July 1977–Jan. 1981.	*** 154,128.74	26,397.43	43,568.52	28	0.00011
Sherer Oil Company/Ringer Tri-State Oil Co. 608 Central Ave., Johnstown, PA 15902.	VEF–0052	340H00496W	reseller-retailer	gasoline	April–Sept. 1979.	387,465.05	96,921.55	149,547.63	39	0.00016
Swann Oil Company** 111 Presidential Blvd., Bala-Cynwyd, PA 19004.	VEF–0053	320H00222W	reseller-retailer	heating oil, residual fuel oil.	Nov.–Dec. 1973.	6,874,342.08	362,811.45	493,323.21	7	0.00003
Vantage Petroleum Co. 515 Johnson Ave., Bohemia, NY 11716.	VEF–0056	200H00026W	reseller-retailer	gasoline	April–Aug. 1979	2,049,481.61	153,193.91	207,375.84	10	0.00004
Totals:						10,235,810.94	1,368,143.60	1,854,640.85		

* Or until relevant decontrol date.
** Subsidiaries include: Swann Oil Co. of Allentown; Swann Oil of Georgia; L.A. Swann Oil Co. and Swann Oil Co. of Philadelphia.
*** The amount the applicant was originally ordered to pay was increased form $125,000.00 to $154,128.74.
**** As explained in the Decision since the collection percentage in this case is greater than 100 percent, the volumetric will not be reduced.

[FR Doc. 00–3347 Filed 2–11–00; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6535–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Landfill Methane Outreach Program ICR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): The Landfill Methane Outreach Program ICR, EPA ICR #1849.02. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 14, 2000.

ADDRESSES: One original and one copy of each comments may be mailed to The Docket Clerk, Air Docket, #A–2000–11, MC 6102, USEPA, The Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington DC 20460. Comments may also be hand delivered to the Air Docket, located in Room M1500, 401 M Street, SW, Washington DC. The telephone number of the Air Docket is (202) 260–7548, and the hours of operation are 8 to 5:30 pm. To obtain a copy of the ICR without charge, contact Brian Guzzone at (202) 564–2666.

FOR FURTHER INFORMATION CONTACT: Brian Guzzone, U.S. Environmental Protection Agency, Office of Atmospheric Programs, Climate Protection Division (6202J), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, or call (202) 564–2666.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities affected by this action are landfill gas-to-energy project developers, landfill owners/operators, and landfill gas energy customers that have joined the EPA Landfill Methane Outreach Program as Allies or Partners.

Title: Landfill Methane Outreach Program ICR (EPA ICR No.1849.02).

Abstract: The Landfill Methane Outreach Program is an EPA-sponsored voluntary program that encourages landfill owners, communities, and project developers to implement methane recovery technologies to utilize the methane as a source of fuel and to reduce emissions of methane, a potent greenhouse gas. The Landfill Methane Outreach Program further encourages utilities and other energy customers to support and promote the use of landfill methane at their facilities. The Landfill Methane Outreach Program signs voluntary Memoranda of Understanding with these organizations to enlist their support in promoting cost-effective landfill gas utilization. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The estimated average public burden per respondent for Allies and Partners is 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering the necessary data, and completing the collection of information. The estimated number of respondents is 250. About 50 of these respondents would respond annually, with the other 200 responding on a one-time basis. The total estimated cost is $165,000, including start-up and annual costs for all respondents over an expected seven year reporting time frame. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 2, 2000.

Dina Kruger,

Chief, Methane Energy Branch.

[FR Doc. 00–3361 Filed 2–11–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6535–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Operating Permits Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: 40 CFR part 70 Operating Permits Regulations, OMB Control Number 2060–0243, expiration date: February 29, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 15, 2000.

FOR FURTHER INFORMATION: For a copy of the ICR, contact Sandy Farmer at EPA by phone at 202–260–2740, by e-mail at farmer.sandy@epa.gov, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1587.05. For technical questions about the ICR, contact Roger Powell at (919) 541–5331.

SUPPLEMENTARY INFORMATION:

Title: Part 70 Operating Permits Regulations (OMB Control No. 2060–0243) expiring 02/29/00. This is a renewal of a currently approved collection.

Abstract: In implementing title V of the Clean Air (Act) and EPA's part 70 operating permits regulations, State and local permitting agencies must development programs and submit them

to EPA for approval (section 502(d) of the Act) and sources subject to the program must prepare operating permit applications and submit them to the permitting authority within 1 year after approval of the program by EPA (section 503 of the Act). Permitting authorities will then issue permits (section 503(c) of the Act) and thereafter enforce, revise, and renew those permits at no more than 5-year intervals (section 502(d) of the Act). Permit applications and proposed permits will be provided to, and are subject to review by, EPA (section 505(a) of the Act). All information submitted by a source and the issued permit shall also be available for public review except for confidential information which will be protected from disclosure (section 503(e) of the Act) and the public shall be given public notice of, and an opportunity for comment on, permit actions (section 502(b)(6) of the Act). Sources will semi-annually submit compliance monitoring reports to the permitting authorities (section 504(a) of the Act). The EPA has the responsibility to oversee implementation of the program (section 502(d)(3) of the Act).

The activities that will occur during the period of this ICR include:

- Permitting authorities issuing the remaining permits;
- Sources submitting semi-annual monitoring and annual compliance certification reports;
- Permitting authorities reviewing those reports;
- Sources submitting applications for permit revisions;
- Permitting authorities processing permit revisions;
- Sources applying for permit renewal;
- Permitting authorities renewing permits;
- Newly subject sources submitting permit applications; and
- Permitting authorities issuing new permits.

All of these activities involve information transmittal in the form of applications and permit actions and information in the form of applications and draft permits are made available for public review and comment. The activities to carry out these tasks are considered mandatory and necessary for implementation of title V and the proper operation of the operating permits program. The information will also be available for public inspection at any time in the offices of the permitting authorities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 18, 1999 (64 FR 56207). No comments were received.

Burden statement: The annual public reporting and record keeping burden for this collection of information cannot be estimated in terms of an average hours per response due to the large number or respondents, the variation in the circumstances for each respondent, and the varied nature of the activities of the program. In terms of average burden per respondent, the ICR estimates the 112 permitting authorities will average 14,152 hours per year implementing this program. The 20,924 estimated part 70 sources will average 153 hours per year complying with this program. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State and local permitting authorities and sources subject to the part 70 operating permits program.

Estimated Number of Respondents: 21,036.

Frequency of Response: The activities included in this ICR cover all aspects of implementing the part 70 operating permits program. Reporting includes the semi-annual monitoring reports and the annual compliance certification reports from sources to permitting authorities and the annual report of enforcement activities from the permitting authorities to EPA. All other activities are either one-time occurrences or on an as-needed basis (i.e., permit revisions).

Estimated Total Annual Hour Burden: 4,779,620 hours.

Estimated Total Annualized Non-labor Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the following addresses. Please refer to EPA ICR No. 1587.05 and OMB Control No. 2060–0243 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: February 10, 2000.

Oscar Morales,

Director, Collection Strategies Division, Office of Environmental Information.

[FR Doc. 00–3362 Filed 2–11–00; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Committee of Advisors on Science and Technology

AGENCY: Office of Science and Technology Policy.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Committee of Advisors on Science and Technology (PCAST), and describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES AND PLACE: February 17, 2000, Washington, DC. This meeting will take place in the Truman Room (Third Floor) of the White House Conference Center, 726 Jackson Place, NW, Washington, DC.

TYPE OF MEETING: Open.

PROPOSED SCHEDULE AND AGENDA: The President's Committee of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on Thursday, February 17, 2000, at approximately 1:00 p.m., to discuss (1) The research and development budget request for FY2001; (2) Issues related to the S&T workforce of the 21st century; and (3) The work of the PCAST panels. This session will end at approximately 5:30 p.m.

PUBLIC COMMENTS: There will be a time allocated for the public to speak on any

of the above agenda items. Please make your request for the opportunity to make a public comment five (5) days in advance of the meeting. Written comments are welcome any time prior to or following the meeting. Please notify Cynthia Chase, of the PCAST Executive Secretariat, at (202) 456–6100, or fax your requests/comments to (202) 456–6026.

FOR FURTHER INFORMATION: For information regarding time, place, and agenda, please call Cynthia Chase, of the PCAST Executive Secretariat, at (202) 456–6100, prior to 3 p.m. on Wednesday, February 16, 2000. Information may also be available at the PCAST website at *http://www.whitehouse.gov/WH/EOP/PCAST/html/PCAST__home.html.* Please note that public seating for this meeting is limited, and is available on a first-come first served basis.

SUPPLEMENTARY INFORMATION: The President's Committee of Advisors on Science and Technology was established by Executive Order 12882, as amended, on November 23, 1993. The purpose of PCAST is to advise the President on matters of national importance that have significant science and technology content, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Committee members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by the Assistant to the President for Science and Technology and, by John Young, former President and CEO of the Hewlett-Packard Company.

Barbara Ann Ferguson,

Assistant Director, Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 00–3438 Filed 2–10–00; 11:06 am]

BILLING CODE 3170–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2379]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding; Correction of Number of Petitions Filed

January 24, 2000.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by February 29, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 95 of the Commission's Rules to Provide Flexibility in the 218–219 MHz Service

Number of Petitions Filed: 8

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2144 Filed 2–11–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 3:33 p.m. on Wednesday, February 9, 2000, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities and reports of the Office of Inspector General.

In calling the meeting, the Board determined, on motion of Director John D. Hawke, Jr. (Comptroller of the Currency), seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than February 4, 2000, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Dated: February 10, 2000.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 00–3511 Filed 2–10–00; 2:17 pm]

BILLING CODE 6714–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meetings

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality.

Times and Dates: 9 a.m.–4 p.m. February 25, 2000.

Place: Conference Room 705A, Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C. 20201.

Status: Open.

Purpose: The National Committee on Vital and Health Statistics (NCVHS) is the Department's statutory federal advisory committee on health data, privacy and health information policy. The NCVHS Subcommittee on Privacy an Confidentiality has scheduled a meeting on Friday, February 25, 2000 to gather information and examine potential issues related to confidentiality policies and practices of ''e-health'' or web based health organizations. At the meeting, the Subcommittee will hear from several expert panels relating to e-health confidentiality policies, practices and issues. The tentative agenda for the meeting, as well as a description of the panels of speakers, will be posted on the NCVHS website: http://ncvhs.hhs.gov, when available.

Contact Person for More Information: Substantive program information about the meeting may be obtained from Gail Horlick (CDC, 404 639–8345), lead staff for the Subcommittee on Privacy and Confidentiality. Information about the NCVHS is available on the NCVHS home page of the HHS, website, or from Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 454–4245.

Dated: February 8, 2000.

James Scanlon,

Director, Division of Data Policy, Office of Program Systems, Office of the Assistant Secretary for Planning and Evaluation, and HHS Executive Staff Director, NCVHS.

[FR Doc. 00–3398 Filed 2–11–00; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–00–01]

Fiscal Year 2000 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Correction.

SUMMARY: The above Program Announcement was published in the **Federal Register,** dated Wednesday, February 2, 2000, page 4976. The deadline date for submission of applications is stated as March 31, 1999 which is a mistake. The corrected deadline for submission of applications is March 31, 2000.

Dated: February 8, 2000.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 00–3305 Filed 2–11–00; 8:45 am]

BILLING CODE 4154–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Capacity-Building Assistance To Improve the Delivery and Effectiveness of Human Immunodeficiency Virus Prevention Services for Racial/Ethnic Minority Populations, Program Announcement #00003

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Capacity-Building Assistance to Improve the Delivery and Effectiveness of Human Immunodeficiency Virus Prevention Services for Racial/Ethnic Minority Populations, Program Announcement #00003.

Times and Dates:

8:30 a.m.–12:30 p.m., March 6, 2000 (Open).
12:30 p.m.–4:30 p.m., March 6, 2000 (Closed).
8:30 a.m.–4:30 p.m., March 7–10, 2000 (Closed).

Place: Crowne Plaza Atlanta Airport, 1325 Virginia Avenue, East Point, Georgia, Phone 404/768–6660.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #00003.

Contact Person for More Information: Megan Foley or Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail MZF3@cdc.gov or EOW1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 7, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–3334 Filed 2–11–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–FR–4561–N–02]

Submission for OMB; Review of Currently Available Lead-Based Paint Encapsulants and Use Patterns in the Control of Residential Lead-Based Paint Hazards

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 15, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposal forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) The office of the agency to collect the information; (3) The OMB approval number, if applicable; (4) The description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequently of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: A review of currently available lead-based paint encapsulants and use patterns in the control of residential lead-based paint hazards.

OMB Control Number: 2539–XXXX.

Description of the Need for the Information and its Proposed Use: Lead-based paint encapsulants are resistant coatings that can be applied to lead-based paint to prevent becoming a lead poisoning hazard. This purposed of this study is to identify current encapsulant products and to review the extent to which encapsulants are being used for residential lead hazard control. Encapsulant manufacturers, users, and lead hazard control professions will be surveyed.

Form Number: None.

Respondents: Individuals or households.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	114		0		0.5		57

Total Estimated Burden Hours: 57.
Status: New.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 8, 2000.

Donna Eden,

Director, Investment Strategies, Policy Management, Office of the Chief Information Officer.

[FR Doc. 00–3296 Filed 2–11–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Az–020–00–1232–EA, AZA–28882]

Closure of Public Lands to Vehicle Use on February 19 and 20, 2000

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of selected public land roads and washes in Maricopa County, Arizona, during the operation of the Gila Bend ''Gila Monster'' Off-Highway Vehicle (OHV) race.

Affected course is described as follows:

Gila and Salt River Meridian, Arizona

T. 6 S., R. 2 W.,
T. 6 S., R. 3 W.,
T. 6 S., R. 4 W.

General location is southeast of Gila Bend, Arizona; south of Interstate 8, north of the Barry M. Goldwater Range, east of State Highway 85 and west of Big Horn road.

SUMMARY: The Phoenix Field Office Manager announces the temporary closure of selected public land roads and washes under its administration in Maricopa County, Arizona. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the official permitted running of the Gila Bend ''Gila Monster'' OHV race.

EFFECTIVE DATES: February 19 and 20, 2000.

SUPPLEMENTARY INFORMATION: Specific restrictions and closure periods are as follows:

The entire designated Gila Bend OHV race course determined and in effect as of February 4, 2000 comprised of BLM and private unimproved roads and washes.

2. The course will be closed to public use from 8 a.m. to 4:30 p.m. on Saturday, February 19, 2000 and from 8 a.m. to 2:30 p.m. on Sunday, February 20, 2000.

3. The entire designated race course is closed to all vehicles, including OHVs, with the exception of authorized and emergency vehicles. The above restrictions do not apply to emergency vehicles and vehicles owned by the United States Government, Arizona Game and Fish Department or Maricopa County. Vehicles and OHVs under permit for operation by event participants must follow the race permit stipulations. Authority for closure of public lands is found in 43 CFR 8340, Subpart 8341 and 43 CFR 8360, Subpart 8364.1. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

FOR FURTHER INFORMATION CONTACT: Jack Watts, Field Office Law Enforcement Ranger, or Penny Foreman, Recreation Specialist, Phoenix Field Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (623) 580–5500.

Dated: February 8, 2000.

Margo E. Fitts,

Assistant Field Manager.

[FR Doc. 00–3385 Filed 2–11–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico, Oil and Gas Lease Sale 175

AGENCY: Minerals Management Service (MMS).

ACTION: Final Notice of Sale 175.

On March 15, 2000, the MMS will open and publicly announce bids received for blocks offered in Sale 175, Central Gulf of Mexico, pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR Part 256). Bidders can obtain a ''Final Notice of Sale 175 Package'' containing this Notice of Sale and several supporting and essential documents referenced herein, from the MMS Gulf of Mexico Region's Public Information Unit, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800)200-GULF, or via the MMS Gulf of Mexico Region's Internet site at http://www.gomr.mms.gov. The MMS also maintains a 24-hour Fax-on-Demand Service at (202) 219–1703. The ''Final Notice of Sale 175 Package'' contains information essential to bidders, and bidders are charged with the knowledge of the documents contained in the package.

Location and Time: Public bid reading will begin at 9 a.m., Wednesday, March 15, 2000, at the Hyatt Regency Conference Center (Cabildo Rooms), 500 Poydras Plaza, New Orleans, Louisiana. All times referred to in this document are local New Orleans time.

Filing of Bids: Bidders must submit sealed bids to the Regional Director (RD), MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, between 8 a.m. and 4 p.m., prior to the Bid Submission Deadline at 10 a.m., Tuesday, March 14, 2000. If the bids are mailed, mark on the envelope containing all the sealed bids the following: Attention: Mr. John Rodi, Contains Sealed Bids for Sale 175.

If the RD receives bids later than the time and date specified above, he will return the bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m., Tuesday, March 14, 2000. In the event of widespread flooding or other natural disaster, the MMS Gulf of Mexico Regional Office may extend the bid submission deadline. Bidders may call (504) 736–0537 for information about the possible extension of the bid submission deadline due to such an event.

Areas Offered for Leasing: The MMS is offering for leasing all blocks and partial blocks listed in the document ''Blocks Available for Leasing in Gulf of Mexico OCS Oil and Gas Lease Sale 175'' included in the Sale Notice Package. All of these blocks are shown on the following Leasing Maps and Official Protraction Diagrams (which may be purchased from the MMS Gulf of Mexico Regional Office Public Information Unit).

Outer Continental Shelf Leasing Maps—Louisiana Nos. 1 through 12. These 30 maps sell for $2 each:

LA1 West Cameron Area (revised 09/01/99)
LA1A West Cameron Area, West Addition (revised 05/30/97)

LA1B West Cameron Area, South Addition (revised 05/30/97)
LA2 East Cameron Area (revised 09/01/99)
LA2A East Cameron Area, South Addition (revised 09/01/99)
LA3 Vermilion Area (revised 09/01/99)
LA3A South Marsh Island Area (revised 09/01/99)
LA3B Vermilion Area, South Addition (revised 09/01/99)
LA3C South Marsh Island Area, South Addition (revised 09/01/99)
LA3D South Marsh Island Area, North Addition (revised 09/01/99)
LA4 Eugene Island Area (revised 09/01/99)
LA4A Eugene Island Area, South Addition (revised 09/01/99)
LA5 Ship Shoal Area (revised 09/01/99)
LA5A Ship Shoal Area, South Addition (revised 09/01/99)
LA6 South Timbalier Area (revised 09/01/99)
LA6A South Timbalier Area, South Addition (revised 09/01/99)
LA6B South Pelto Area (revised 09/01/99)
LA6C Bay Marchand Area (revised 12/30/94)
LA7 Grand Isle Area (revised 09/01/99)
LA7A Grand Isle Area, South Addition (revised 09/01/99)
LA8 West Delta Area (revised 09/01/99)
LA8A West Delta Area, South Addition (revised 09/01/99)
LA9 South Pass Area (revised 09/01/99)
LA9A South Pass Area, South and East Addition (revised 09/01/99)
LA10 Main Pass Area (revised 09/01/99)
LA10A Main Pass Area, South and East Addition (revised 09/01/99)
LA10B Breton Sound Area (revised 09/01/99)
LA11 Chandeleur Area (revised 09/01/99)
LA11A Chandeleur Area, East Addition (revised 09/01/99)
LA12 Sabine Pass Area (revised 05/30/97)

Outer Continental Shelf Official Protraction Diagrams. These diagrams sell for $2.00 each:

NH15–12 Ewing Bank (revised 09/01/99)
NH16–04 Mobile (revised 09/01/99)
NH16–07 Viosca Knoll (revised 09/01/99)
NH16–10 Mississippi Canyon (revised 05/01/96)
NG15–03 Green Canyon (revised 09/01/99)
NG15–06 Walker Ridge (revised 09/01/99)
NG15–09 (Unnamed) (revised 04/27/89)
NG16–01 Atwater Valley (revised 09/01/99)
NG16–04 Lund (revised 09/01/99)
NG16–07 Lund South (revised 09/01/99)

Note: A CD–ROM (in ARC/INFO format) containing all of the Gulf of Mexico Leasing Maps and Official Protraction Diagrams, except for those not yet revised to digital format, is available from the MMS Gulf of Mexico Regional Office Public Information Unit for a price of $15.00. Only NG15–09 in the Central Gulf is not available on the CD–ROM. The Leasing Maps and Official Protraction Diagrams are also available on our Internet site. See also 65 FR 2191, published January 13, 2000, for the current status of all Gulf of Mexico Leasing Maps and Official Protraction Diagrams.

Acreage of all blocks is shown on these Leasing Maps and Official Protraction Diagrams. The available Federal acreage of all whole and partial blocks in this sale is shown in the document ''List of Blocks Available for Leasing, Sale 175'' included in the Sale Notice Package. Some of these blocks may be partially leased or transected by administrative lines such as the Federal/State jurisdictional line. Information on the unleased portions of such blocks, including the exact acreage, is found in the document titled ''Central Gulf of Mexico Lease Sale 175—Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease,'' included in the Sale Notice Package.

Areas Not Available For Leasing: The following blocks in the Central Gulf of Mexico Planning Area are not available for leasing:

Blocks currently under lease;
Viosca Knoll, Block 69 (which is currently under appeal); and
The following blocks which are beyond the United States Exclusive Economic Zone and have been temporarily deferred from leasing by the Department of the Interior due to ongoing negotiations with the Government of Mexico:

Area NG15–09	Area NG16–07
Blocks	Blocks.
133 through 135	172, 173.
177 through 184	213 through 217.
221 through 238	252 through 261.
265 through 281	296 through 305.
309 through 320	349.
358.	

Leasing Terms and Conditions: Primary lease terms, minimum bids, annual rental rates, royalty rates, and royalty suspension areas are shown on the map ''Lease Terms and Economic Conditions, Sale 175, Final'' for leases resulting from this sale:

Primary lease terms: 5 years for blocks in water depths of less than 400 meters; 8 years for blocks in water depths of 400 to 799 meters; and 10 years for blocks in waters depths of 800 meters or deeper;

Minimum bids: $25 per acre or fraction thereof for blocks in water depths of less than 800 meters and $37.50 per acre or fraction thereof for blocks in water depths of 800 meters or deeper;

Annual rental rates: $5 per acre or fraction thereof for blocks in water depths of less than 200 meters and $7.50 per acre or fraction thereof for blocks in water depths of 200 meters or deeper, until initial production is obtained;

Royalty rates: 16⅔% royalty rate for blocks in water depths of less than 400 meters and a 12½% royalty rate for blocks in waters depths of 400 meters or deeper, except during periods of royalty suspension;

Royalty Suspension Areas: Royalty suspension *may* apply for blocks in water depths of 200 meters or deeper; see the map for specific areas. See 30 CFR 203 for the final rule specifying royalty suspension terms.

The map titled ''Stipulations and Deferred Blocks, Sale 175, Final'' depicts the blocks where the Topographic Features, Live Bottoms, Military Areas, and Blocks South of Baldwin County, Alabama, stipulations apply. The texts of the lease stipulations are contained in the document ''Lease Stipulations for Oil and Gas Lease Sale 175, Final'' included in the Final Sale Notice Package. Also shown on this map are the deferred blocks noted above.

Rounding: The following procedure must be used to calculate minimum bid, rental, and minimum royalty on blocks with fractional acreage: Round up to the next whole acre and multiply by the applicable dollar amount to determine the correct minimum bid, rental, or minimum royalty.

Note: For the minimum bid only, if the calculation results in a decimal figure, round up to the next whole dollar amount (see next paragraph). The minimum bid calculation, including all rounding, is shown in the document ''Blocks Available for Leasing in Gulf of Mexico OCS Oil and Gas Lease Sale 175'' included in the Sale Notice Package.

Method of Bidding: For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled ''Sealed Bid for Oil and Gas Lease Sale 175, not to be opened until 9 a.m., Wednesday, March 15, 2000.'' The total amount bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document ''Bid Form and Envelope'' contained in the Sale Notice Package.

The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** at 64 FR 56215, on October 18, 1999. Bidders, *i.e.* corporations, partnerships, and limited liability companies, must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Regional Office Adjudication Unit. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, *e.g.,* 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of

the bidder(s) to comply with all applicable regulations, including paying the 1/5th bonus on all high bids. A statement to this effect must be included on each bid (see the document ''Bid Form and Envelope'' contained in the Sale Notice Package).

Bid Deposit: Submitters of high bids must deposit the 1/5th bonus by using electronic funds transfer (EFT) procedures, following the detailed instructions contained in the document ''Instructions for Making EFT 1/5th Bonus Payments'' included in the Sale Notice Package. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account specified in the EFT instructions) during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

Note: Certain bid submitters (*i.e.,* those that do NOT currently own or operate an OCS property OR those that have ever defaulted on a 1/5th bonus payment (EFT or otherwise)) are required to guarantee (secure) their 1/5th bonus payment. For those who must secure the EFT 1/5th bonus payment, one of the following options may be used: (1.) Provide a third party guaranty; (2.) Amend Areawide Coverage; (3.) Provide a Letter of Credit; or (4.) Provide a lump sum check. The EFT instructions specify the requirements for each option.

Withdrawal of Blocks: The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids: The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated Sale Notice Package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance. To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, high bids will be evaluated in accordance with MMS bid adequacy procedures. A copy of the current procedures, ''Modifications to the Bid Adequacy Procedures'' (64 FR 37560 of July 12, 1999), effective July 1, 1999, is available from the MMS Gulf of Mexico Regional Office Public Information Unit.

Successful Bidders: As required by MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued by EFT in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended. Each bidder in a successful high bid must have on file, in the MMS Gulf of Mexico Regional Office Adjudication Unit, a currently valid certification (Debarment Certification Form) certifying that the bidder is not excluded from participation in primary covered transactions under Federal nonprocurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification becomes available. In the event of new or revised applicable information, MMS will require a subsequent certification before lease issuance can occur. Persons submitting such certifications should review the requirements of 43 CFR, Part 12, Subpart D. A copy of the Debarment Certification Form is contained in the Sale Notice Package.

Equal Opportunity: The MMS requests that the certification required by 41 CFR 60–1.7(b) and Executive Order (EO) No. 11246 of September 24, 1965, as amended by E.O. No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985) be on file in the MMS Gulf of Mexico Regional Office Adjudication Unit prior to bidding. However, if a lease is awarded to a successful bidder who does not have these forms on file, the lessee must comply with the affirmative action compliance program requirements within 120 days of the effective date of the lease.

Information to Lessees: The Sale Notice Package contains a document titled ''Information to Lessees.'' These Information to Lessees items provide information on various matters of interest to potential bidders.

Robert Brown,

Acting Director, Minerals Management Service.

Approved: February 7, 2000.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 00–3306 Filed 2–11–00; 8:45 am]

BILLING CODE 4816–MR–U

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 10–11, 2000.

TIMES: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, N.E., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 502–1820.

Dated: February 8, 2000.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 00–3373 Filed 2–11–00; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 13–14, 2000.

TIMES: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 8, 2000.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 00–3374 Filed 2–11–00; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATE: April 17, 2000.

TIME: 8:30 a.m. to 5 p.m.

ADDRESS: United States District Court, Courtroom 1903, 219 South Dearborn Street, Chicago, IL.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 8, 2000.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 00–3375 Filed 2–11–00; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 25–26, 2000.

TIMES: 8:30 a.m. to 5 p.m.

ADDRESSES: New York Marriott Marquis, 1535 Broadway, New York, NY.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 8, 2000.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 00–3376 Filed 2–11–00; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: June 7–8, 2000.

TIMES: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, N.E., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 502–1820.

Dated: February 8, 2000.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 00–3377 Filed 2–11–00; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of Open Meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATE: September 21–22, 2000.

TIMES: 8:30 a.m. to 5:00 p.m.

ADDRESSES: Arden Conference Center, Arden House Road, Harriman, NY.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 502–1820.

Dated: February 8, 2000.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 00–3378 Filed 2–11–00; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collections of Form WH–501 and WH–501S, Wage Statement (Wage and Hour Division). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 14, 2000.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW, Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

I. Background

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) requires that each farm labor contractor, agricultural employer, and

agricultural association which employs any migrant or seasonal worker, make, keep, and preserve records for three years for each worker concerning the basis on which earnings are paid, the number of piece work units earned, if applicable, the number of hours worked, the total pay period earnings, the specific sums withheld and the purpose of each sum withheld, and the net pay. It is also required that an itemized written statement of this information be provided to each worker each pay period. The WH–501 (English) and WH–501S (Spanish) are optional forms which an employer may use for this purpose.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of this information collection in order to carry out its responsibility to determine compliance with applicable provisions of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). While use of the forms is optional, disclosure and maintenance of the information is required by MSPA.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Wage Statement.

OMB Number: 1215–0148.

Agency Number: WH–501 and WH–501(S).

Affected Public: Farms; Businesses or other for-profit; individuals or households.

Total Respondents: 1.4 million.

Frequency: Recordkeeping; Third party disclosure, Reporting on occasion.

Total Responses: 34 million.

Average Time per Response: 1 minute.

Estimated Total Burden Hours: 566,667.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 8, 2000.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 00–3340 Filed 2–11–00; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Open Meeting

AGENCY: National Commission on Libraries and Information Science.

Matter to be considered: Proposed Closure and Transfer of Functions of National Technical Information Service (NTIS)

Summary: In fulfillment of its statutory mandate to advise the President and the Congress on national and international library and information policies and plans, the Commission has been studying the proposal made in August 1999 by Secretary of Commerce William Daley to close the National Technical Information Service (NTIS) and transfer its collections, functions, services, and assets to the Library of Congress. The Commission has convened two meetings of interested parties for the purpose of allowing them to comment and to offer recommendations. More than 75 major stakeholders representing federal agencies, libraries and the private sector participated in the earlier meetings resulting in narrowing the number of options being considered for the future of NTIS.

In an effort to ensure that all interested parties have the opportunity to be heard, NCLIS is scheduling one additional meeting to review a draft of the Commission's findings. The Commission will then review all comments, before making its final recommendation to Congress and the Administration.

Date and Time: Tuesday, February 29, 2000 at 9:00 a.m. until 3:00 p.m.

Place: 253 Russell Senate Office Building.

Letters to legislators and NCLIS testimony before the Senate Subcommittee on Science, Technology and Space, Committee on Commerce, Science and Transportation as well as comments, reports and summaries of the earlier meetings can be viewed on the NCLIS web site at *http://www.nclis.gov/info/ntis/ntis.html.* Anyone wishing to make comments on the deliberations or to present statements may contact Woody Horton at (202) 606–9200 or through e-mail at *whorton@nclis.gov* no later than 10:00 a.m. February 25, 2000. All comments received will be made publicly available on the NCLIS website.

To make special arrangements for physically challenged persons, contact Barbara Whiteleather (202) 606–9200.

Dated: February 9, 2000.

Robert S. Willard,

Executive Director, NCLIS.

[FR Doc. 00–3364 Filed 2–11–00; 8:45 am]

BILLING CODE 7527–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March

30, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Defense Logistics Agency (N1–361–99–3, 3 items, 2 temporary items). Electronic copies of documents created using electronic mail and word processing that are associated with materials accumulated by agency historians or used for historical purposes. Recordkeeping copies of these files are proposed for permanent retention.

2. Department of Defense, National Imagery and Mapping Agency (N1–537–99–2, 52 items, 52 temporary items). Paper and electronic records relating to research and development in the systems/technology area, including electronic copies of documents created using electronic mail and word processing. Records relate to such subjects as preparation of budgets, project administration, evaluations of unsolicited proposals, systems engineering, testing, and computer support. This schedule does not include such records as overall program management and policy files, design drawings, concept papers and other documents concerning intelligence and geospatial extraction projects, and audiovisual records, which will be scheduled separately.

3. Department of Defense, Office of the Inspector General (N1–509–00–4, 9 items, 9 temporary items). Records relating to inspection procedures and administration and to inspection concept development, including electronic copies of documents created using electronic mail and word processing. Records documenting approved inspection concepts are to be transferred to separate inspections case files, which were previously approved for permanent retention.

4. Department of Energy, National Renewable Energy Laboratory (N1–434–99–4, 6 items, 6 temporary items). Records relating to legal matters. Included are attorney working files, records relating to standards of conduct and intellectual property, and electronic copies of documents created using electronic mail and word processing.

5. Department of Health and Human Services, National Institutes of Health (N1–443–00–3, 28 items, 27 temporary items). Patient and other medical records relating to the operation of the Clinical Center, including electronic copies of documents created using electronic mail and word processing. Records relate to such matters as the collection and disbursement of funds donated to meet emergency needs of patients, blood collection and testing, laboratory findings, diagnostic radiology, transfusion services, the use of student volunteers, and medical treatment provided patients. Clinical Center protocol files, documenting approved proposals for the use of human subjects in research and related activities, are proposed for permanent retention.

6. Department of Justice, Office of the Inspector General (N1–60–99–11, 7 items, 5 temporary items). Records relating to audits, inspections, and investigations consisting of reports, correspondence, memoranda, and supporting work papers, including electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of final reports of audits and inspections are proposed for permanent retention. Record-keeping copies of historically significant investigation case files were previously approved for permanent retention.

7. Department of Labor, Bureau of Labor Statistics (N1–257–00–2, 5 items, 5 temporary items). Paper and electronic records relating to international price programs consisting of company information, importing and exporting data, and information on pricing. This schedule reduces the retention period for paper files, which were previously approved for disposal.

8. Department of Labor, Employment Standards Administration (N1–317–99–1, 16 items, 12 temporary items). Labor organization reports and related correspondence, investigative case files, and electronic and paper records associated with the Labor Organization Reporting System (LORS), a database which contains information extracted

from labor organization reports. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of historically significant investigative case files and LORS data in CD-ROM format, with related documentation. Paper copies of labor organization reports and related correspondence were previously approved for disposal.

9. Department of Labor, Mine Safety and Health Administration (N1–433–00–1, 37 items, 34 temporary items). Records relating to agency directives and other issuances. Included are issuances that pertain to administrative management, bulletins that provide information of interest to agency employees, and files relating to the preparation of issuances. Electronic copies of documents created using electronic mail and word processing also are included. Recordkeeping copies of manuals, handbooks, and other issuances that pertain to agency organization, policies, and procedures are proposed for permanent retention.

10. Department of the Navy, United States Marine Corps (N1-NU–00–1, 7 items, 7 temporary items). Field supply comprehensive analysis records and related logistics reports as well as environmental protection records relating to lead and copper control. Records include critiques, background information, and findings regarding supply problems, reports on logistical difficulties, and reports and related records on the control of lead and copper in water systems. Also proposed for disposal are electronic copies of documents created using electronic mail and word processing.

11. Department of Transportation, Surface Trans-portation Board (N1–134–99–3, 1 item, 1 temporary item). Official tariff files relating to the rates and practices of carriers regarding the transportation of property and passengers. This schedule reduces the retention period of the records, which were previously approved for disposal.

12. Environmental Protection Agency, Office of Research and Development (N1–412–97–4, 6 items, 5 temporary items). Applications and related records pertaining to the use of alternate test procedures for monitoring water and air pollutants. Proposed for permanent retention are records relating to approved alternate test procedures for monitoring radioactive materials.

13. Environmental Protection Agency, Agency-wide (N1–412–00–4, 4 items, 4 temporary items). Records associated with the Grants Information and Control System (GICS), including software programs, electronic data, ad hoc and monthly reports, and supporting documentation. GICS is a tracking system for financial, administrative, and project data for grants, interagency agreements, and cooperative agreements.

14. Federal Energy Regulatory Commission, Office of Electric Power Regulation (N1–138–99–7, 3 items, 3 temporary items). Transmission Planning and Evaluation Reports, which are submitted annually by transmitting utilities that own or operate integrated transmission facilities at or above 100 kilovolts. Reports relate to transmission planning, constraints, and available transmission capacity. Also included are electronic copies of documents created using electronic mail and word processing.

15. Federal Energy Regulatory Commission, Office of the Chief Information Officer (N1–138–98–12, 6 items, 6 temporary items). Records associated with the Publications and Correspondence Tracking System (PACTS), an automated system used to track the status of requests for information from the Commission's public reference room. Included are such records as the PACTS electronic database, reports generated from the database, and systems documentation.

16. Office of Management and Budget, Cost Accounting Standards Board (N1–51–00–1, 1 item, 1 temporary item). Accounting disclosure statements accumulated during the period 1968 to 1980. Statements, which were submitted by contractors performing work for the Department of Defense, the Department of Energy, and the National Aeronautics and Space Administration, include information on annual total sales to the government and the allocation of expenses.

17. Social Security Administration (N1–47–00–1, 47 items, 33 temporary items). Older records accumulated by various agency administrative and program offices, primarily during the period 1935 to 1945, that relate to such matters as accounting, personnel management, grants, information services, and disability insurance. Included are such records as blank survey forms, press clippings, quarterly workload reports, working papers and survey files used to prepare reports, closed state grant-in-aid reports and audits, ledgers of expenditures for grant-in-aid programs, grant docket files, subject files relating to hospital facilities, personnel subject files, and time and attendance files. Records proposed for permanent retention, which span the period 1935 to 1966, include correspondence, subject files, reports, and related program records of the Bureau of Public Assistance, the Social Security Board Information Services unit, the Office of Program Operations, the Office of Federal-State Relations, the Office of Research and Statistics, and the Office of the Actuary.

18. Tennessee Valley Authority, Engineering Services (N1–142–97–12, 17 items, 17 temporary items). Meteorological and precipitation data used to provide raw data for reports on precipitation in the Tennessee River Basin issued monthly and annually. Records include rain gauge recorder charts, observer reports and weather summaries, visibility data charts and reports, and records relating to equipment validation.

19. District Courts of the United States, All District Courts (N1–21–00–2, 1 item, 1 temporary item). Subpoenas that were issued for persons outside of a court's district. Such subpoenas are no longer accumulated by District Courts.

20. District Courts of the United States, U.S. District Court for the District of Columbia (N1–21–99–1, 10 items, 6 temporary items). Older records dating from approximately 1899 to 1970 relating to hospital liens, mechanic liens, attorney grievances, appearance bonds, notaries, and applications from ministers seeking authority to perform marriages. Case files relating to persons committed to mental health facilities, adoptions, and guardianship are proposed for permanent retention.

Dated: February 24, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–3341 Filed 2–11–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Interagency Arctic Research Policy Committee; Meeting

The National Science Foundation announces the following meeting:

Name: Arctic Research Policy Committee (IARPC).

Date and Time: Wednesday, March 8, 2000, 2:00–4:00 pm.

Place: National Science Foundation, Room 375, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed. The meeting is closed to the public because future fiscal year budget and policy issues will be discussed.

Contact Person: Charles E. Myers, Office of Polar Programs, Room 755, National Science Foundation, Arlington, VA 22230, Telephone: (703) 306–1029.

Purpose of Committee: The Interagency Arctic Research Policy Committee was established by Public Law 98–373, the Arctic Research and Policy Act, to help set priorities

for future arctic research, assist in the development of a national arctic research policy, prepare a multi-agency budget and plan for arctic research, and simplify coordination of arctic research.

Proposed Meeting Agenda Items:

1. U.S. Arctic Policy Review.
2. Goals and Opportunities Report of the Arctic Research Commission.
3. IARPC Program Initiatives—Global Change Research, Arctic Environmental Change.
4. Implementation of Program Initiatives in FY 2001–2005.

Charles E. Myers,

Head, Interagency Arctic Staff, Office of Polar Programs.

[FR Doc. 00–3372 Filed 2–11–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Dockets 72–4 and 72–40]

Duke Energy Corporation, Oconee Nuclear Site; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Exemption From Certain Requirements of 10 CFR Part 72

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.212(a)(2) and 72.214 to Duke Energy Corporation (Duke). The requested exemption would allow Duke to store burnable poison rod assemblies (BPRAs) in the NUHOMS®–24P storage system at the Oconee Nuclear Site Independent Spent Fuel Storage Installation (ISFSI).

Environmental Assessment (EA)

Identification of Proposed Action

By letter dated August 30, 1999, Duke requested an exemption from the requirements of 10 CFR 72.212(a)(2) and 72.214 to store BPRAs in the NUHOMS®–24P storage system at the Oconee Nuclear Site ISFSI. Duke is a general licensee, authorized by NRC to use spent fuel storage casks approved under 10 CFR part 72, Subpart K. Furthermore, Duke is using the NUHOMS®–24P storage system design approved by NRC under Certificate of Compliance (CoC) No. 1004 to store only spent fuel at the ISFSI.

By exempting Duke from both 10 CFR 72.214 and 72.212(a)(2), Duke will be authorized to use its general license to store BPRAs in casks approved under part 72, as exempted. The proposed action before the Commission is whether to grant these exemptions under 10 CFR 72.7.

The ISFSI is located 30 miles west of Greenville, SC, on the Oconee Nuclear Power Plant site. The Oconee Nuclear Site ISFSI is an existing facility constructed for interim dry storage of spent nuclear fuel.

On July 26, 1999, the cask designer, Transnuclear West Inc. (TN West), submitted a CoC amendment request to NRC to address the storage of Babcock and Wilcox (B&W) 15x15 and Westinghouse 17x17 fuel assembly types with BPRAs. TN West provided additional information and revised calculations on November 29, 1999, in response to the NRC staff's request. The NRC staff has reviewed the application and determined that storing B&W 15x15 and Westinghouse 17x17 fuel assembly types with BPRAs in the NUHOMS®–24P storage system would have minimal impact on the design basis and would not be inimical to public health and safety.

Need for the Proposed Action

Duke has an imminent need to reduce the inventory of spent nuclear fuel assemblies at the Oconee Nuclear Site prior to an upcoming refueling activity that requires empty fuel storage locations in the spent fuel pool. Furthermore, Duke must load spent fuel containing BPRAs to accommodate the number of planned and potential refueling activities that require empty spent fuel storage locations scheduled for the first calendar quarter of 2000. Because the 10 CFR part 72 rulemaking to amend the CoC will not be completed prior to the date that Duke needs to begin loading the NUHOMS®–24P with fuel containing BPRAs, the NRC is granting this exemption based on the staff's technical review of information submitted by Duke and TN West.

Environmental Impacts of the Proposed Action

The potential environmental impact of using the NUHOMS®–24P storage system was initially presented in the Environmental Assessment (EA) for the Final Rule to add the NUHOMS®–24P to the list of approved spent fuel storage casks in 10 CFR 72.214 (59 FR 65898 (1994)). Furthermore, each general licensee must assess the environmental impacts of the specific ISFSI in accordance with the requirements of 10 CFR 72.212(b)(2). This section also requires the general licensee to perform written evaluations to demonstrate compliance with the environmental requirements of 10 CFR 72.104, ''Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS [Monitored Retrievable Storage Installation].''

The NUHOMS®–24P storage system is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an ISFSI include tornado winds and tornado generated missiles, design basis earthquake, design basis flood, accidental cask drop, lightning effects, fire, explosions, and other incidents.

Special cask design features of the NUHOMS®–24P storage system include a horizontal canister system composed of a steel dry shielded canister (DSC), a reinforced concrete horizontal storage module (HSM) and a transfer cask (TC). The welded DSC provides confinement and criticality control for the storage and transfer of spent nuclear fuel. The concrete module provides radiation shielding while allowing cooling of the DSC and fuel by natural convection during storage. The TC is used for transferring the DSC from/to the spent fuel pool building to/from the HSM.

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. Without the loss of either containment, shielding, or criticality control, the risk to public health and safety is not compromised.

The staff performed a detailed safety evaluation of the proposed exemption request and the CoC amendment request and found that the addition of the BPRAs to the B&W 15×15 and Westinghouse 17×17 fuel types does not reduce the safety margin. In addition, the staff has determined that the storage of BPRAs in the NUHOMS®–24P storage system does not pose any increased risk to public health and safety. Furthermore, the proposed action now under consideration would not change the potential environmental effects assessed in the initial rulemaking (59 FR 65898 (1994)).

Therefore, the staff has determined that there is no reduction in the safety margin nor significant environmental impacts as a result of storing B&W 15×15 or Westinghouse 17×17 fuel types with BPRAs in the NUHOMS®–24P storage system.

Alternative to the Proposed Action

The staff evaluated other alternatives involving removal of the BPRAs from the fuel assemblies and found that these alternatives produced a greater occupational exposure, increased handling and storage costs, and an

increased environmental impact as a result of handling the BPRAs separately as low-level waste. The alternative to the proposed action would be to deny approval of the exemption and, therefore, require Duke to disassemble and store the BPRAs as low-level waste in separate containers.

Agencies and Persons Consulted

On January 24, 2000, the Division of Radiation Control, South Carolina Department of Health, was contacted about the EA for the proposed action and had no concerns.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2) and 72.214 so that Duke may store spent nuclear fuel containing BPRAs in the NUHOMS®–24P storage system will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this exemption request, see the Duke exemption request dated August 30, 1999, which is docketed under 10 CFR part 72, Docket Nos. 72–4 and 72–40.

The exemption request is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 2nd day of February 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–3339 Filed 2–11–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

General Electric Company; Vallecitos Nuclear Center; Notice of Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

The U.S. Nuclear Regulatory Commission (NRC) will conduct a public meeting on various aspects of the Commission's responsibilities for the regulation of the General Electric (GE) Vallecitos Nuclear Center in Sunol, California. The facility is operated by the General Electric Company, an NRC licensee. The objective of the meeting is to ensure that the public has knowledge about the activities that take place at Vallecitos, and understands the NRC's responsibilities in respect to these activities. The NRC staff will discuss these matters with the public, including answering questions and listening to public comments.

The meeting will be held the evening of Thursday, February 24, 2000, from 7:00 p.m. to 10:00 p.m. The meeting will be preceded by an informal open house beginning at 6:00 p.m. to allow the public an opportunity to talk with the NRC staff and other organizations such as citizen groups, and state and local government officials.

The meeting will be held at the Pleasanton Public Library in Pleasanton, California. The library is located at 400 Old Bernal Avenue, Pleasanton, California, 94566. The Library's main phone number is 925–931–3400.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, Telephone: 301–415–1642, email: *fxc@nrc.gov.*

SUPPLEMENTARY INFORMATION: The General Electric Company has been engaged since 1955 in various activities involving nuclear energy at the Vallecitos Nuclear Center located near Pleasanton, California. One of the ongoing activities is research and development on the physical and chemical analysis of irradiated reactor fuel at the facilities Radioactive Materials Laboratory. GE possesses a Special Nuclear Materials License from the NRC that authorizes them to perform this work. The work requires periodic shipments of irradiated nuclear fuel into the facility from various sites throughout the United States. The Vallecitos site also houses three permanently shutdown reactors, and an operating research reactor, licensed by the NRC. In addition, the facility also fabricates radioactive sources used in medicine and industry under a license issued by the State of California.

The NRC previously held a public meeting on the Vallecitos facility on October 20, 1999, in Livermore, California. In order to ensure that the public has the necessary information about the facility, and to provide sufficient time for public discussion of this information, the NRC has scheduled an additional public meeting on the Vallecitos facility for February 24, 2000. The NRC staff will address the issues previously covered at the October 20, 1999, meeting, and also provide additional information on issues that were raised by the public at the October 20, 1999, meeting. A detailed agenda for the meeting will be available at the meeting. Anticipated topics are the research and development activities involving the NRC Special Nuclear Materials license at the facility, related radioactive materials transportation activities, the status of the permanently shutdown reactors and the operating research reactor at the facility, and related NRC inspection activities. Francis X. Cameron, Special Counsel for Public Liaison, at the NRC will serve as the facilitator for the meeting.

Dated at Rockville, Maryland, this 8th day of February, 2000.

For the Nuclear Regulatory Commission.

Theodore S. Sherr,

Chief, Licensing and International Safeguards Branch, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 00–3479 Filed 2–11–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on February 29, 2000, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, February 29, 2000—8:30 a.m. until the conclusion of business

The Subcommittee will discuss proposed ACRS activities and related matters. It will also discuss matters scheduled for the ACRS meeting with the Commission on Thursday, March 2, 2000. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be

accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: February 8, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–3338 Filed 2–11–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request Review of Information Collection: Instructions and Form 1417

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), Pub. L. this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for clearance of a revised information collection. OPM Form 1417, Combined Federal Campaign Annual Results Reporting Form, is used to collect information from the 387 local CFC's around the country to verify campaign results.

We estimate 387 OPM Form 1417's are completed annually. Each form takes approximately 60 minutes to complete. The annual estimated burden is 387 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on 202/606–8358, or e-mail to mbtoomey@opm.gov.

Comments on this proposal should be received within 10 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Jennifer M. Hirschmann, Office of CFC Operations, U.S. Office of Personnel Management, 1900 ''E'' Street, NW, Room 5450, Washington, DC 20415 And Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Jennifer Hirschmann, Combined Federal Campaign Operations, 202/606–2564.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–3356 Filed 2–11–00; 8:45 am]

BILLING CODE 6325–01–U

SECURITIES AND EXCHANGE COMMISSION

Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 22d–1, SEC File No. 270–275, OMB Control No. 3235–0310.

Notice is herby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is publishing for public comment the following summary of previously approved information collection requirements in Rule 22d–1 under the Investment Company Act of 1940 (''Investment Company Act'').

Rule 22d–1 [17 CFR 270.22d–1] provides registered investment companies that issue redeemable securities (''funds'') an exemption from section 22(d) of the Investment Company Act to the extent necessary to permit schedules variations in or elimination of the sales load on fund securities for particular classes of investors or transactions, provided certain conditions are met. The rule imposes an annual burden per fund of approximately 15 minutes, so that the total burden for the approximately 2,400 funds that might rely on the rule is estimated to be 600 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Dated: February 7, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3368 Filed 2–11–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Extension: Rule 24b–1; SEC File No. 270–205; OMB Control No. 3235–0194]

Requests Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below.

Rule 24b–1 (17 CFR 240.24b–1) requires a national securities exchange to keep and make available for public inspection a copy of its registration statement and exhibits filed with the Commission, along with any amendments thereto.

There are eight national securities exchanges that spend approximately one half hour each complying with this rule, for an aggregate total compliance burden of four hours per year. The staff estimates that the average cost per

respondent is $57.68 per year, calculated as the costs of copying ($12.36) plus storage ($45.32), resulting in a total cost of compliance for the respondents of $461.44.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 7, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3369 Filed 2–11–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 14, 2000.

An open meeting will be held on Wednesday, February 16, 2000 at 10:00 a.m., in Room 1C30. A closed meeting will be held on Thursday, February 17, 2000 at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matter of the open meeting scheduled for Wednesday, February 16, 2000 is:

Consideration of whether to issue a release requesting comments regarding when or under what conditions the Commission should accept financial statements of foreign private issuers that are prepared using standards promulgated by the International Accounting Standards Committee. For further information, contact Donald J. Gannon at (202) 942–4400.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, February 17, 2000 is:

Institution and settlement of injunctive actions; and

Institution of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: February 8, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–3433 Filed 2–9–00; 4:30 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–42396; File No. SR–CBOE–99

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Operation of the Retail Automatic Execution System

February 7, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. The proposal permits the appropriate CBOE Floor Procedure Committee (''FPC'') to implement a new order assignment procedure for the Exchange's Retail Automatic Execution System (''RAES''). The new RAES order assignment procedure is called ''100 Spoke RAES Wheel.'' On January 27, 2000, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules governing the operation of RAES, as set forth below. Proposed new language is in italics.

* * * * *

RAES Operations

This Rule governs RAES operations in all classes of options, except to the extent otherwise expressly provided in this or other Rules in respect of specified classes of options.

RULE 6.8.

(a)–(g) No change.

...Interpretations and Policies

.01–.05 No change.

.06(a) In the exercises of the their authority to determine the procedure for assigning RAES-eligible orders to Participating Market-Makers for execution, the appropriate FPCs have determined that in the absence of any specified alternative assignment methodology, an assigned Participating Market-Maker is required to buy/sell the entirety of each RAES order assigned to him up to the maximum size of RAES-eligible orders in that class of options. Alternatively, the appropriate FPC may specify that some or all options classes are subject to ''Variable RAES'' *or to the ''100 Spoke RAES Wheel.''*

(b) No change.

(c) Under the ''100 Spoke RAES Wheel,'' RAES orders would be assigned to logged-in market-makers according to the percentage of their in-person agency contracts traded in that class (excluding RAES contracts traded) compared to all of the market-maker in-person agency contracts traded (excluding RAES contracts) during the review period. The review period will be determined by the appropriate Floor Procedure Committee and may be for any period not in excess of two weeks. The percentage distribution determined during the review period will be effective for the succeeding review period. On each revolution of the RAES Wheel, subject to the exceptions described below, each participating market-maker (who is logged onto RAES at the time) will be assigned enough contracts to replicate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Timothy Thompson, Director, Regulatory Affairs, CBOE, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, SEC, dated January 19, 2000 (''Amendment No. 1''). In Amendment No. 1, the CBOE restricted the market maker review period for determining RAES allocations to no more than two weeks. *See* Section II.A.1.b., *infra.*

his percentage of contracts on RAES that he traded in-person in that class during the review period. A participation percentage will be calculated for each market-maker for each class that the market-maker trades. For this purpose all DPM Designees of the same DMP unit will have their percentage aggregated into a single percentage for the DPM unit.

Once a market-maker has logged onto RAES, he will be assigned contracts on the RAES Wheel until his market-maker participation percentage has been met. This may mean that multiple orders (or an order and a part of the succeeding order) will be assigned to the same market-maker on the Wheel. To understand how the RAES orders will actually be allocated to market-makers to meet those percentages, one must understand the concepts of ''spokes'' and wedges.'' A ''spoke'' is 1% of the RAES Wheel and often may be equal to one contract. The appropriate Floor Procedure Committee may determine the number of contracts that make up one spoke. Each market maker logged onto RAES for that class, regardless of his participation percentage, is entitled to be assigned at least one spoke on every revolution of the RAES Wheel. For example, if a spoke equals one contract then there will be 100 spokes that will be assigned to market-makers on every revolution of the RAES Wheel. If a spoke is defined as five contracts then there will be 500 RAES contracts assigned to the participating market-makers before the RAES Wheel completes one revolution. Generally, the RAES Wheel will consist of the number of spokes replicating the cumulative percentage of all market-makers logged onto the system who have a participation percentage plus one spoke for each market-maker that does not have a specific participation percentage.

A wedge is the maximum number of spokes that a market-maker may be consecutively assigned at any one time of the RAES Wheel. Because the size of the wedge may be smaller than the number of contracts to which a particular market-maker is entitled during one revolution of the RAES Wheel, that market-maker will receive more than one turn during one revolution of the RAES Wheel. The wedge size will be variable, at the discretion of the appropriate Floor Procedure Committee and may be different for different classes or the same for all classes.

The appropriate Floor Procedure Committee will notify the membership of each class of options that it subject to the ''100 Spoke RAES Wheel''.

(d) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to grant the appropriate FPC authority to institute a new procedure for assigning orders on RAES to individual market makers. This new procedure is referred to as the ''100 Spoke RAES Wheel.''

a. *Background.* CBOE FPCs currently have two options by which to allocate RAES orders: The ''entire-order'' procedure and Variable RAES. Under the entire order procedure, RAES orders are assigned to market makers participating on RAES one order at a time to the market maker next in line on the ''RAES Wheel.'' When a particular market maker reaches his turn on the RAES Wheel, the market maker is assigned one entire order whether the order is for one contract or for the maximum number of contracts eligible for entry into RAES for that particular class of options. By contrast, under Variable RAES, for each class of options in which a market maker participates in RAES, that market maker is required to designate the maximum number of contracts that he is willing to buy or sell each time it is his turn on the RAES Wheel.[4] Additionally, the appropriate FPC may establish a minimum number of contracts which a market maker must be willing to accept. CBOE represents that its FPCs now employ Variable RAES for equity options and both narrow-based and broad-based index options.[5] The current proposal provides the appropriate FPC with a third choice for apportioning RAES trades among participating market makers.

b. *The '''100 Spoke RAES Wheel''.* Under the ''100 Spoke RAES Wheel,'' RAES orders would be assigned to logged-in market makers according to the percentage of their in-person agency contracts traded in that class (excluding RAES contracts traded) compared to all of the market maker in-person agency contracts traded (excluding RAES contracts) during the review period. Agency contracts are defined as contracts that are represented by an agent and do not include contracts traded between market makers in person in the trading crowd. CBOE represents that in-person agency contracts include trading by a market maker against an order represented by a broker in the trading crowd, or against a booked order, but do not include contracts traded on RAES.[6]

On each revolution of the RAES Wheel, subject to the exceptions described below, each participating market maker (who is logged onto RAES at the time) will be assigned enough agency contracts to replicate the percentage of contracts on RAES that he traded in-person in that class during the review period. The appropriate FPC will determine the review period but in no event will it be entitled to set the review period for a period greater than two weeks. A participation percentage will be calculated for each market maker for each class that the market maker trades. The percentage distribution determined during a review period will be effective for the succeeding review period. Thus, any new market maker entrant in the trading crowd will earn his percentage entitlement for RAES trades after spending no more than two weeks in the crowd.[7] During the initial review period, a new market maker will receive a one-spoke entitlement. All designees of the same Designated Primary Market Maker (''DPM'') unit will have their percentage aggregated into a single percentage for the DPM unit. Because of this methodology, the DPM unit can still receive its entitled percentage even if any particular designee is not logged onto RAES at the time.

Once a percentage has been determined for a particular market maker, to understand how the RAES orders will actually be allocated to market makers to meet those percentages, one must understand the

[4] *See* Securities Exchange Act Release No. 41821 (September 1, 1999), 64 FR 50313 (September 16, 1999) (approving implementation of Variable RAES).

[5] Telephone conversation between Timothy Thompson, Director, Regulatory Affairs, CBOE, and Gordon Fuller, Special Counsel, Division of Market Regulation, SEC (February 3, 2000).

[6] *Id.*

[7] *See* Amendment No. 1, Letter from Timothy Thompson, Director, Regulatory Affairs, CBOE, to Nancy Sanow, Senior Special Counsel, Division of Market Regulatory, SEC, dated January 19, 2000.

concepts of ''spokes'' and ''wedges.'' The RAES Wheel may be envisioned as having a number of ''spokes,'' each generally representing 1% of the total participation of all market makers in the class. That is, a market maker generally will be assigned one spoke for each 1% of his market maker participation during the review period. If all market makers who are active during the review period are logged on to RAES and no other makers are logged on, the RAES Wheel will consist of 100 spokes, representing 100% of all market maker activity during the review period. Normally, one spoke on the Wheel will be equivalent to one contract, except that the appropriate FPC may establish a larger spoke size. For example, setting the spoke size to five contracts would redefine the RAES Wheel for a particular option class as a Wheel of 500 contracts. Changing the spoke size (and thus, the Wheel size) does not change the participating percentages of the individual market makers.

For example, if there are twelve market makers in a crowd, consisting of ten veteran market makers each of whom accounted for 10% of total market trading (exclusive of RAES trades) during the review period, and two new market makers, and if nine of the veteran market makers and both of the new market makers are logged on to RAES, the RAES Wheel will consist of 92 spokes (10 spokes for each of the nine veteran market makers, and one spoke for each of the two new market makers),[8] accounting for 92 contracts in a complete revolution of the Wheel. In this case, each of the veteran market makers will participate in ten out of every 92 contracts traded on RAES, and the two new market makers will each receive one out of every 92 contracts.

A wedge is the maximum number of spokes that may be assigned to a market maker in any one ''hit'' during a rotation of the RAES Wheel. The concept of the wedge is to break up the distribution of contracts into smaller groupings in order to reduce the exposure of any one market maker to market risk. If the size of the wedge is smaller than the number of spokes to which a particular market maker may be entitled based on his participation percentage, that market maker will be assigned more than once during one revolution of the RAES Wheel. For example, in the case where one spoke is equal to one contract and the market maker's participation percentage is 15% (so he is entitled to 15 contracts on one RAES Wheel revolution, *i.e.,* 15% of 100) and the wedge size is 10, that market maker first will be assigned 10 contracts on the RAES Wheel and then 5 contracts at a different place on the RAES Wheel during that same revolution. Thus, in one complete revolution of the RAES Wheel, he will be assigned two times for at total of 15 contracts (assuming one contract per spoke), consisting of one 10-contract assignment and one 5-contract assignment. The wedge size will be variable at the discretion of the appropriate FPC and may be established at different levels for different classes, or at the same level for all classes.

Trade Example. To better understand how RAES contracts would be assigned under the ''100 Spoke RAES Wheel,'' the Exchange provides the following example. Assume ten market makers (''MM'') are logged into option class ABC with the following participation percentages: MM1=14%; MM2-1%; MM3=8%; MM4=24%; MM5=8%; MM6=5%; MM7=3%; MM8=2%; MM9=12%; MM10=23%.

Now assume the maximum number of contracts that any market maker may receive during one turn on the Wheel, *i.e.,* wedge size, is ten contracts. Assuming the Wheel starts with MM1 and spoke size is equal to 1 contract, the distribution of RAES contracts during one revolution of the RAES Wheel for class ABC will look as follows:

1. MM1 assigned 10 contacts
2. MM2 assigned 1 contact
3. MM3 assigned 8 contact
4. MM4 assigned 10 contacts
5. MM5 assigned 8 contracts
6. MM6 assigned 5 contracts
7. MM7 assigned 3 contracts
8. MM8 assigned 2 contracts
9. MM9 assigned 10 contracts
10. MM10 assigned 10 contracts
11. MM1 assigned 4 contracts
12. MM4 assigned 10 contracts
13. MM9 assigned 2 contracts
14. MM10 assigned 10 contracts
15. MM4 assigned 4 contracts
16. MM10 assigned 3 contracts

As can be seen, market makers 1 and 9 receive two turns on the Wheel during one revolution because their entitlement was higher than the wedge size. Market makers 4 and 10 receive three turns on the Wheel during one revolution.

The following example demonstrates how the orders of a particular size will be distributed under the scenario described above,

Order 1=20 contracts: Contra distribution is MM1=10 contracts; MM2=1; MM3=8; MM4=1
Order 2=4 contracts: Contra distribution is MM4=4 contracts
Order 3=20 contracts: Contra distribution is MM4=5 contracts; MM5=8; MM6=5; MM7=2
Order 4=20 contracts: Contra distribution is MM7=1 contract; MM8=2; MM9=10; MM10=7
Order 5=20 contracts: Contra distribution is MM10=3 contracts; MM1=4; MM4=10; MM9=2; MM10=1

d. *Benefit of the Proposed Distribution Via the 100 Spoke RAES Wheel.* CBOE believes that, in those classes where the 100 Spoke RAES Wheel is employed, the distribution of RAES trades will be essentially identical to the distribution of in-person agency market maker trades on non-RAES trades in that class. CBOE further believes that the implementation of the 100 Spoke RAES Wheel will reward those market makers who are most active in providing the services that a market maker is expected to perform, *i.e.,* providing liquidity to agency business in the assigned option class.

2. Statutory Basis

CBOE believes that the proposed rule change will enhance the ability of the Exchange to provide instantaneous, automatic execution of public customers' orders at the best available prices, which furthers the objectives of Section 6(b)(5)[9] of the Exchange Act to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

[8] The one-spoke allocation for each of the two new market makers will apply only during their initial review period. After that initial review period, each of the two new market makers will be entitled to the number of spokes they have earned during the applicable review period.

[9] 15 U.S.C. 78f(b)(5).

organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE.

All submissions should refer to File No. SR–CBOE–99–40 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3370 Filed 2–11–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42400; File No. SR–NASD–99–23]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Locked and Crossed Markets That Occur Prior to the Opening of the Market

February 7, 2000.

I. Introduction

On May 3, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change would amend NASD Rule 4613(e), ''Locked and Crossed Markets,'' to alter the rights and obligations of market participants in connection with locked and crossed markets[3] that occur prior to the opening of the market. On May 14, 1999, Nasdaq filed Amendment No. 1 to the proposal.[4] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on June 10, 1999.[5] The Commission received four comment letters on the proposal.[6] Nasdaq responded to the commenters in a letter dated December 23, 1999.[7] This order approves the proposal, as amended.

II. Description of the Proposal

Currently, NASD Rule 4613(e) requires a market participant[8] that enters a quotation at or after 9:25:00 a.m.[9] that would lock or cross the market at the opening to act to avoid locking or crossing the market at the opening, but in no case later than 30 seconds after the opening (*i.e.,* 9:30:30). The market participant could, for example, send a SelectNet order to take out the quotation(s) that the market participant is crossing or locking. Nasdaq states that although current NASD Rule 4613(e) has alleviated some instances of locked or crossed markets at the opening, locked and crossed markets continue to occur at the opening because a market participant whose quotation is locked or crossed may not respond immediately to the SelectNet message of a market participant seeking to resolve the locked or crossed market. To address ongoing concerns with locked and crossed markets, Nasdaq proposes to amend NASD Rule 4613(e).

The proposed rule change will alter the rights and obligations of market participants with regard to pre-opening locked and crossed markets. As described below, a market participant's rights and obligations will vary depending on whether the locked or crossed market occurs prior to or after 9:20 a.m.

Locks or Crosses Occurring At or After 9:20 a.m. and Before 9:30 a.m. Under the proposal, a market participant that enters a quotation that locks or crosses the market between 9:20 a.m. and 9:29:59 a.m. must send to each market participant that he locks or crosses a SelectNet message at the quoted price(s) of the receiving market participant (''Trade-or-Move Message'') in an aggregate amount of at least 5,000 shares. The initiating or ''active'' locker must send the Trade-or-Move Messages to all parties to the lock or cross prior to or immediately after entering the locking or crossing quotation(s), and must place a modifier on each message indicating that the message is a Trade-or-Move Message.[10] Within 30 second of receiving a Trade-or-Move Message, the recipient must either: (1) Trade in full with the incoming Trade-or-Move Message; (2) decline to trade with the incoming Trade-or-Move Message and move its quotation to a price level that unlocks or uncrosses the market; or (3)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A locked market occurs when the quoted bid price is the same as the quoted ask price. A crossed market occurs when the quoted bid price is greater than the quoted ask price.

[4] *See* Letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated May 14, 1999. Amendment No. 1 revised the proposal to require a market maker that sends a Trade-or-Move Message (as defined below) to place a modifier on the message indicating the message is a Trade-or-Move Message.

[5] *See* Securities Exchange Act Release No. 41473 (June 2, 1999), 64 FR 31335.

[6] *See* letter from Arthur J. Kearney, Chairman, and Leopold Korins, President and Chief Executive Officer, Security Traders Association, to Jonathan G. Katz, Secretary, SEC, dated May 28, 1999 (''STA Letter''); letter from Gerald D. Putnam, Chief Executive Officer, Archipelago, L.L.C., to Jonathan G. Katz, Secretary, SEC, dated June 30, 1999 (''Archipelago Letter''); letter from Kevin M. Foley, Bloomberg L.P., to Jonathan G. Katz, Secretary, SEC, dated July 12, 1999 (''Bloomberg Letter''); and letter from Cameron Smith, General Counsel, Island ECN, to Jonathan Katz, Secretary, SEC, dated July 12, 1999 (''Island Letter'').

[7] *See* letter from John F. Malitzis, Assistant General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division, Commission, dated December 23, 1999 (''December 23 Letter''). In the December 23 Letter, Nasdaq clarified that the proposal will apply to electronic communications networks (''ECNs''). In addition, Nasdaq provided an additional explanation of the rationale for the proposal and stated that the proposal would not require ECNs to assume proprietary positions.

[8] NASD Rule 4613(e) discusses the obligations of ''market makers'' with regard to locked and crossed markets. For purposes of NASD Rule 4613(e), the term ''''market maker'' includes: (1) Any NASD member that enters into an ECN, as that term is defined in Exchange Act Rule 11AC1–1(a)(8), a priced order that is displayed in Nasdaq; and (2) any NASD member that operates the ECN when the priced order being displayed has been entered by a person or entity that is not an NASD member. *See* NASD Rule 4613(e)(3).

[9] All references are to Eastern Time.

[10] *See* Amendment No. 1, *supra* note 4. The Trade-or-Move modifier will allow a market participant to distinguish a Trade-or-Move Message (to which a receiving market maker is obligated to respond) from other pre-opening messages it may receive.

trade with a portion of the incoming Trade-or-Move Message and move its quotation to a level that unlocks or uncrosses the market.

A market participant that trades in full with a Trade-or-Move Message (*i.e.,* up to the full amount of the incoming Trade-or-Move Message) may maintain, rather than move, its locked or crossed quotation if it wishes to trade more shares. Thereafter, any party to the lock or cross has the right, but not an obligation, to send a Trade-or-Move Message to any other party to the lock or cross. Any party to the lock or cross that receives a Trade-or-Move Message would be obligated to trade with the message or move its quotation within 30 seconds.

The following example illustrates the operation of this provision of the proposed rule:

At 9:21 a.m., MMA locks four market participants—MMB, MMC, MMD, and MME—each of which is quoting 1,000 shares. Because MMA has locked the market after 9:20 a.m., MMA must send Trade-or-Move Messages in an aggregate amount of 5,000 shares to all four market participants whose quotations MMA has locked. Accordingly, MMA sends a Trade-or-Move Message for 1,100 shares to MMB, which declines and moves its quotation. MMA sends a Trade-or-Move Message for 1,500 shares to MMC, who fills it partially (1,000 shares), and, as required, moves its quotation. MMA sends MMD a message for 400 shares. MMD fills the message in full and moves its quotation ⅛th to unlock the market.[11] MMA sends MME a 2,000-share message. MME fills it completely. MME may remain at its quotation, but is not required to do so. MME also may send a Trade-or-Move Message to MMA, which must trade with the message or move its quotation within 30 seconds. In addition, MMA may send another Trade-or-Move Message to MME, which must trade with the message or move its quotation.

Locks or Crosses Occurring Prior to 9:20 a.m. Beginning at 9:20 a.m., nay market participant that is a party to a lock or cross that occurred prior to 9:20 a.m. will have the right, but not an obligation, to send a Trade-or-Move Message of any size to any party to the lock or cross. A market participant that receives a Trade-or-Move Message must respond within 30 seconds by either: (1) Trading in full with the incoming Trade-or-Move Message; (2) declining to trade with the incoming Trade-or-Move Message and moving its quotation to a price level that unlocks or uncrosses the market; or (3) Trading with a portion of the incoming Trade-or-Move Message and moving its quotation to a level that unlocks or uncrosses the market. A market participant that trades in full with the incoming Trade-or-Move Message is not required to move its quotation.

The following example illustrates the operation of this provision of the proposed rule:

At 9:18 a.m., MMW and MMX are bidding 74, and MMY and MMZ enter offer prices of 73, which cross the market. Because it is before 9:20 a.m., none of the market participants may send Trade-or-Move Messages. At 9:20 a.m., all four market participants have the right to send Trade-or-Move Messages of any size to either of the two market participants crossing them. Any market participant that does not fill an incoming Trade-or-Move Message in full within 30 seconds must move its question out of the cross.

Unlike a market participant that actively locks or crosses the market after 9:20 a.m., a market participant that locks or crosses the market prior to 9:20 a.m. is not obligated to send a specific number of shares to all parties to the lock or cross. Nasdaq maintains that the distinction is appropriate because market participants often do not actively monitor their quotations prior to 9:20 am., and, as a result, it is often difficult to determine which party actively locked or crossed the market prior to 9:20 a.m. For this reason, the obligations and rights of the parties to the lock or cross do not begin until 9:20 a.m.

Nasdaq believes that the 9:20 a.m. benchmark establishes a reasonable point in time for market participants to begin responding to income Trade-or-Move Messages and actively monitoring their quotations to determine whether they are locking or crossing other market participants. In Nasdaq's view, a market participant that receives a Trade-or-Move Message at or after 9:20 a.m. and remains at its quotation without trading in full or in part with the incoming message generally would be considered in violation of the proposed rule, although it would not be considered to be a violation of NASDAQ Rule 4613(b).[12]

III. Summary of Comments

The Commission received four comment letters regarding the proposal.[13] The STA supported the proposal, noting that its members have expressed concern about market disarray prior to the opening of the market. The STA believed that the proposal would substantially reduce the problem of pre-opening locked and crossed markets.

Archipelago, Bloomberg (the owner of Bloomberg Tradebook L.L.C.), and Island, which operate ECNs, opposed the proposal. The ECNs argued that the proposal would require ECNs, which generally do not trade on a proprietary basis, to assume proprietary positions in excess of the orders entered by their participants.[14] Archipelago believed that the 5,000 share requirement would limit the ability of ECNs and smaller market makers to use Trade-or-Move-Messages and would limit ECNs' and retail investors' participation in the pre-opening market. Archipelago urged Nasdaq to revise its proposal to decrease the 5,000-share Trade-or-Move Message requirement to a single unit of trading.

In addition, Bloomberg asserted that because the proposal omits references to ECNs, the application of the proposal to ECNs is unclear.[15] Bloomberg also supported reducing the share requirement to the greater of 100 shares or the actual size of the order that would be locked or crossed.

Island argued that the share requirement could be anticompetitive because it requires a market participant to send a 5,000 share order if it wants to improve the inside market. It further noted that, due to the inability of some ECNs to manually modify their quotations, the proposal could force ECNs to execute 5,000 share orders, regardless of the size of the ECN's quotation. Island recommended that Nasdaq address the problem of pre-opening locked and crossed markets by permitting market makers to open firm, pre-opening quotations. A market maker

[11] Because MMD has filled the message in full, it is not required to move its quote.

[12] Nasdaq states that because the proposed rule will apply to quotations entered prior to the opening of the market, a market participant that receives a Trade-or-Move Message prior to the opening would have no liability under NASDAQ Rule 4613(b), ''Firm Quotations.'' In addition, Nasdaq believes that a market participant that receives a Trade-or-Move Message prior to the opening would owe no liability to the message under Exchange Act Rule 11Ac1–1. Thus, a market participant that receives a Trade-or-Move Message would be permitted to move its quote without trading upon the receipt of what, during market hours, would be a SelectNet liability order.

Under the current proposal, a market participant that receives a Trade-or-Move Message within the last 30 seconds before the opening (*i.e.,* at or after 9:20 a.m.) must trade or move within 30 seconds, even if the end of that 30 seconds occurs after the market's opening. Moreover, a market participant that wishes to enter a locking or crossing quote at or after 9:30 a.m. would be required to use reasonable means to avoid locking or crossing the market by, for example, sending a SelectNet message to the party (or parties) it will lock or cross. *See* NASD Notice to Members 97–49.

[13] *See* note 6, *supra.*

[14] *See* Archipelago Letter, Bloomberg Letter, and Island Letter, *supra* note 6.

[15] *See* Bloomberg Letter, *supra* note 6.

whose closed quotation was locked or crossed by an open quotation would be required to open its quotation at a modified level or risk an unexcused withdrawal at or prior to the open.

IV. Discussion

After carefully considering all of the comments, the Commission finds, for the reasons discussed below, that the proposed rule change is consistent with the Act and the rules and regulations applicable to the NASD. In particular, the Commission finds that the proposal is consistent with the requirements of Sections 15A(b)(6), 15A(b)(11), and Section 11A(a)(1)(C) of the Act.[16] Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 15A(b)(11) requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations. In Section 11A(a)(1)(C), Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.[17]

Specifically, the Commission finds that the proposal is consistent with Sections 15A(b)(6), 15A(b)(11), and 11A(1)(C) of the Act because it is designed to reduce the frequency of pre-opening locked and crossed markets, which should help to provide more informative quotation information, facilitate price discovery, and contribute to the maintenance of a fair and orderly market. The proposal will require a market participant that enters a locking or crossing quotation between 9:20 a.m. and 9:29:59 a.m. to send Trade-or-Move Message(s) in an aggregate amount of 5,000 shares to each party to the locked or crossed market, thereby creating a substantial trading requirement for any market participant that wishes to enter a locking or crossing quotation between 9:20 a.m. and 9:29:59 a.m. In addition, the proposal will allow, but not require, any party to a locked or crossed market that occurs prior to 9:20 a.m. to send a Trade-or-Move Message of any size after 9:20 a.m. to any other party to the locked or crossed market. The recipient of a Trade-or-Move Message must respond to that message within 30 seconds of receiving it.

The Commission believes that the 5,000 share Trade-or-Move Message requirement may reduce instances for pre-opening locked and crossed markets by creating a disincentive for a market participant to enter a locking or crossing quotation between 9:20 a.m. and 9:29:59 a.m. In addition, Trade-or-Move Message may provide an effective mechanism for promptly resolving any pre-opening locked or crossed markets that occur. In this regard, the Commission notes that the recipient of a Trade-or-Move Message must respond to the message within 30 seconds by either (1) trading in full with the incoming Trade-to-Move Message; (2) declining to trade with the incoming Trade-or-Move Message and moving its quotation to a price level that unlocks or uncrosses the market; or (3) trading with a portion of the incoming Trade-or-Move Message and moving its quotation to a price level that unlocks or uncrosses the market. By reducing instances of pre-opening locked and crossed markets, and facilitating the prompt resolution of any pre-opening locked or crossed markets that occur, the proposal should help to provide a more orderly opening in Nasdaq securities, to the benefit of all market participants.

The Commission believes, as it has concluded previously,[18] that continued locking and crossing of the market can negatively impact market quality. By helping to reduce the frequently of pre-opening locked and crossed markets, the Commission believes that the proposal should improve market quality and enhance the production of fair and orderly quotations. Accordingly, the Commission believes that the proposal is designed to produce fair and informative quotations, consistent with Section 15A(b)(11), and to remove impediments to and perfect the mechanism of a free and open market and a national market system, consistent with Section 15A(b)(6).

As discussed more fully above, several ECNs expressed concerns regarding the proposal.[19] In response, Nasdaq stated that the current proposal would apply equally to market makers and ECNs, and the customers of market makers and ECNs.[20]

In response to questions concerning the rationale for the 5,000 share Trade-or-Move Message, Nasdaq stated that a market participant should not be able to ''bid up'' or otherwise manipulate the opening price of a security by displaying a 100 share locking or crossing quote prior to the opening of the market.[21] According to Nasdaq, the 5,000 share Trade-or-Move Message requirement is designed to require a market participant to risk significant capital if it intends to lock or cross the market during one of the most critical points in the trading day.[22]

Nasdaq disagreed with the commenters' assertions that the 5,000 share requirement would require ECNs to assume unwanted proprietary positions and would effectively exclude ECNs from the pre-opening session. In this regard, Nasdaq stated that an ECN with an order of less than 5,000 shares that would lock or cross the market could (1) attempt to match the order internally with the order of another subscriber; (2) attempt to fill the order by sending a SelectNet message to the market participant(s) it would lock or cross; or (3) wait to accumulate the 5,000 shares and then send a Trade-or-Move Message. In addition, an ECN whose subscriber entered a locking or

[16] 15 U.S.C. 78o–3(b)(6), 15 U.S.C. 78o–3(b)(11), and 15 U.S.C. 78k–1(a)(1)(C).

[17] In approving the proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] *See* Securities Exchange Act Release No. 40455 (September 22, 1998), 63 FR 51978 (September 29, 1998) (order approving File No. SR–NASD–98–01) (''1998 Order'')

[19] Specifically, the ECNs maintained that: (1) The application of the proposal to ECNs was unclear; (2) the 5,000 share Trade-or-Move Message requirement discriminates unfairly against ECNs and would create an unnecessary or inappropriate burden on competition by requiring ECNs to assume unwanted proprietary positions; (3) the proposal would require an ECN to execute the full size of an incoming 5,000 share Trade-or-Move Message, regardless of the size of the ECN's quotation; (4) the 5,000 share Trade-or-Move Message requirement would penalize a market participant seeking to improve the inside price; (5) the proposal would limit the participation of ECNs, retail investors, and smaller broker-dealers in the pre-opening market; and (6) Nasdaq failed to provide a rationale for the 5,000 share Trade-or-Move Message requirement.

[20] *See* December 23 Letter, *supra* note 7.

[21] *See* December 23 Letter, *supra* note 7.

[22] *See* December 23 Letter, *supra* note 7.

crossing quotation between 9:20 a.m. and 9:29:59 a.m. could require its subscriber to comply with the Trade-or-Move Message requirement.[23] Nasdaq also noted that an ECN with a pre-opening order that locked or crossed the market could wait until the opening of the market before sending a SelectNet message to the market participants it would lock or cross.[24]

Nasdaq stated that the proposal would not require an ECN that received a Trade-or-Move Message in excess of its subscriber's posted quotation to execute the full size of the incoming Trade-or-Move Message.[25] Instead, the ECN would be required to execute the incoming Trade-or-Move Message only up to the size of its subscriber's order and could then decline the remainder of the Trade-or-Move Message.[26] For example, if an ECN received a 5,000 share Trade-or-Move Message directed to its subscriber's 1,000 share order, the ECN would fill its customer's 1,000-share order and decline the remainder of the Trade-or-Move Message. [27]

Nasdaq also maintained that the 5,000 share requirement must apply equally to ECNs and market makers for the proposed rule to operate effectively.[28] If the requirement applied to market makers but not to ECNs, a market maker or its customer could avoid the requirement by entering a locking or crossing order in an ECN for display in Nasdaq.[29] In addition, because the 5,000 share requirement applies equally to all market participants, including market makers, the customers of market makers, and ECN subscribers, Nasdaq maintained that the proposal is consistent with Section 15(a)(6) of the Act and does not discriminate between customers, issuers, brokers, or dealers.[30]

The Commission believes that the proposed changes are a reasonable means to address the problem of pre-opening locked and crossed markets. By establishing a significant trading requirement for a market participant seeking to enter a locking or crossing quotation prior to the opening of the market, the proposal may reduce the frequency of pre-opening locked and crossed markets. The Commission believes that a substantial trading requirement, such as the 5,000 share Trade-or-Move Message requirement proposed by Nasdaq, rather than the 100 share or actual size trading requirement suggested by the commenters, may be useful to achieve the proposal's goal of reducing instances of pre-opening locked and cross markets.

As Nasdaq noted in its response to the commenters, an ECN with a subscriber seeking to enter a pre-opening order of less than 5,000 shares that would lock or cross the market has a number of options open to it that do not require the ECN to take a proprietary position. An ECN can reject the locking or crossing order, just as ECNs reject locking or crossing orders during normal trading hours. Alternatively, an ECN whose subscriber entered a locking or crossing order between 9:20 a.m. and 9:29:59 a.m. could require the subscriber to comply with the Trade-or-Move Message requirement.[31] In addition, the proposal would not require an ECN that received a Trade-or-Move Message in excess of its subscriber's quotation to execute the full size of the incoming Trade-or-Move Message; instead, the ECN could trade with the incoming Trade-or-Move Message up to the size of its subscriber's order and decline the remainder of the Trade-or-Move Message.[32] For these reasons, the Commission does not believe that the proposal would exclude ECNs from participating in the pre-opening market. In addition, because the proposed Trade-or-Move Message requirements will apply equally to orders placed through market makers and through ECNs, the Commission does not believe that the proposal discriminates unfairly against ECNs.

The Commission believes that Nasdaq's position that the proposal must apply equally to all market participants to operate effectively is reasonable. As argued, an exception from the Trade-or-Move Message requirements for orders entered into an ECN could allow market participants to avoid the requirements of the proposed rule by placing orders with an ECN rather than with a market maker.[33]

With regard to one commenter's assertion that the proposal penalizes a market participant seeking to provide price improvement, the Commission notes that the proposal is designed to provide a more orderly opening for the Nasdaq market and to prevent efforts to manipulate the opening price of a security by entering a 100 share locking or crossing quotation.[34] The Commission believes that the proposal is a reasonable means to accomplish these goals. Finally, the Commission notes that market participants would be able to enter quotations that are not subject to the 5,000 share Trade-or-Move Message requirement after the market opens at 9:30 a.m.[35]

V. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act in general, and in particular, with Sections 15A(b)(6), 15A(b)(11), and Section 11A of the Act.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (SR–NASD 99–23), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [37]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3371 Filed 2–11–00; 8:45 am]

BILLING CODE 8010–01–M

[23] Telephone conversation between John Malitzis, Assistant General Counsel, Nasdaq, and Yvonne Fraticelli, Special Counsel, Division, Commission, on January 18, 2000.

[24] *See* December 23 Letter, *supra* note 7.

[25] Telephone conversation between John Malitzis, Assistant General Counsel, Nasdaq, and Yvonne Fraticelli, Special Counsel, Division, Commission, on January 24, 2000.

[26] *See* January 24 conversation, *supra* note 25.

[27] *See* January 24 conversation, *supra* note 25.

[28] *See* December 23 Letter, *supra* note 7.

[29] *See* December 23 Letter, *supra* note 7.

[30] *See* December 23 Letter, *supra* note 7.

[31] *See* January 18 conversation, *supra* note 23.

[32] *See* January 24 conversation, *supra* note 25.

[33] *See* December 23 Letter, *supra* note 7.

[34] *See* December 23 Letter, *supra* note 7.

[35] However, as the Commission has noted previously, market participants are required to use reasonable means to avoid locking and crossing the market. *See* 1998 Order, *supra* note 18.

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Deadline for Submitting Comments on the Withdrawal of GSP Benefits for Belarus and Schedule of Hearings and Deadlines for Submitting Comments on Petitions for the GSP 1999 Country Practices Review

AGENCY: Office of the United States Trade Representatives (USTR).

ACTION: Notice.

SUMMARY: The purpose of this notice is to set forth the timetables for (1) public comment on the proposal of the Trade Policy Staff Committee (TPSC) to withdraw GSP benefits from Belarus because of lack of progress on internationally recognized worker rights and (2) public hearings on petitions requesting modifications in the status of certain GSP beneficiary developing countries in regard to their intellectual property practices, as specified in 15 CFR 2007.(b)

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, DC

20508 (Tel. 202/395–6971). Public versions of all documents relating to this review may be seen by appointment in the USTR public Reading Room between 9:30–12 a.m. and 1–4 p.m. (Tel. 202/395–6186).

SUPPLEMENTARY INFORMATION: The GSP program grants duty free treatment to designated eligible articles that are imported from designated beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974, as amended (''Trade Act'') (19 U.S.C. 2461 *et seq.*) To Qualify for GSP privileges, each country must comply with several eligibility requirements set forth in sections 502(b) and 502(c) of the Trade Act (19 U.S.C. 2462(b) and 2462(cc)), including whether the country is taking steps to afford internationally recognized worker rights and the extent to which it is providing adequate and effective protection of the intellectual property rights. Once granted, GSP benefits may be withdrawn, suspended or limited by the President with respect to any article or with respect to any country. The statute also provides that if as a result of changed circumstances such country would be barred from designation as a beneficiary developing country under Act, the President shall, after notifying Congress, withdraw or suspend the designation of any country as a beneficiary country. (19 U.S.C. 2462(d)(2)).

I. Withdrawal of GSP Benefits for Belarus

In June 1997 the TPSC received a petition by the American Federation of Labor that requested a review of labor law and practice in Belarus under the auspices of the GSP program. This petition was accepted for review and public comment was received and hearings held. The United States also raised its concerns with the government of Belarus. Notwithstanding the subsequent dialogue with the Government of Belarus, the TPSC is unable to recommend that Belarus is ''taking steps'' to afford internationally recognized worker rights, as required by the GSP statute. Accordingly, absent a substantial improvement in Belarus labor practices, the TPSC proposes to recommend that the President withdraw all GSP benefits for Belarus.

A. Opportunity for Public Comment

This notice solicits public comments on the Trade Policy Staff Committee's proposal to withdraw GSP benefits for Belarus. All written comments should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. All submissions must be in English and should conform to the information requirements of 15 CFR 2007. A party must provide fourteen copies of its statement which must be received by the Chairman of the GSP Subcommittee no later than 5 p.m., Thursday, March 9, 2000. Comments received after the deadline will not be accepted.

Comments should be submitted in fourteen (14) copies, in English, to the chairman of the GSP Subcommittee of the Trade Police Staff Committee, 600 17th Street, NW, Room 518, Washington, DC 20508. Information submitted will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. If the document contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, any document containing confidential information should be clearly market ''confidential'' at the top and bottom of each page of the document. The version that does not contain confidential information (the public version) should also be clearly marked at the top and bottom of every page (either ''public version'' or ''nonconfidential'').

II. Petitions Accepted for Review Regarding Country Practices

Pursuant to 15 CFR 2007.0(b), the Trade Policy Staff Committee has accepted petitions to review the status of Armenia, the Dominican Republic, Kazakhstan, Moldova, Ukraine, and Uzbekistan as beneficiary developing countries in relation to their practices concerning intellectual property protection.

Any modifications to the list of beneficiary developing countries for purpose of the GSP program resulting from the Country Practices Review will take effect on such date as will be notified in a future **Federal Register** notice.

A. Opportunities for Public Comment

The GSP Subcommittee of the TPSC invites comments in support of, or in opposition to, any petition which is the subject of this notice. Submissions should comply with 15 CFR Part 2007, including sections 2007.0 and 2007.1. All submissions should identify the subject article(s) in terms of the current Harmonized Tariff Schedule of the United States (''HTS'') nomenclature.

Comments should be submitted in fourteen (14) copies, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee, 600 17th Street, NW, Room 518, Washington, DC 20508. Information submitted will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information granted ''business confidential'' status pursuant tot 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. If the document contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, any document containing confidential information should be clearly marked ''confidential'' at the top and bottom of each page of the document. The version that does not contain confidential information (the public version) should also be clearly marked at the top and bottom of every page (either ''public version'' or ''nonconfidential''). Comments should be submitted no later than 5 p.m. on March 9, 2000.

B. Notice of Public Hearings

Hearings will be held on April 3 and 4, 2000 beginning at 10:00 a.m. at the Office of the U.S. Trade Representative, 1724 F Street, N.W., Washington, D.C. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to present oral testimony at the hearings must submit the name, address, and telephone number of the witness(es) representing their organization to the Chairman of the GSP Subcommittee, Such requests to present oral testimony at the public hearings should be accompanied by fourteen (14) copies, in English, of a written brief or statement, and should be received by 5 p.m. on March 9, 2000. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in the briefs or statements submitted for the record. Post-hearing and rebuttal briefs or statements should conform to the regulations cited above and be submitted in fourteen (14) copies, in English, no later than 5 p.m. on April 21, 2000. Interested persons not wishing to appear at the public

hearings may also submit pre-hearing written briefs or statements by 5:00 p.m. on March 9, 2000 and post-hearing and rebuttal written briefs or statements by April 21, 2000.

Jon Rosenbaum,

Assistant USTR for Trade and Development.

[FR Doc. 00–3400 Filed 2–11–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending February 4, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–6839.

Date Filed: January 31, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC12 USA–EUR Fares 0043 dated 28 January 2000, Resolution 015h—USA Add-on Amounts between USA and UK, Intended effective date: 1 April 2000.

Docket Number: OST–2000–6855.

Date Filed: February 2, 2000.

Parties: Members of the International Air Transport Association.

Subject: CAC/27/Meet/008/99 dated January 10, 1999, Finally Adopted Cargo Agency Resolutions r1–14, Minutes—CAC/27/Meet/007/99 dated January 10, 1999, Intended effective date: April 1, 2000.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 00–3380 Filed 2–11–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 4, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–6841.

Date Filed: January 31, 2000.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 28, 2000.

Description: Application of Continental Airlines, Inc. pursuant to 49 U.S.C. 41108 and 41102 and subpart Q, applies for a certificate of public convenience and necessity of indefinite duration authorizing Continental to provide scheduled foreign air transportation of persons, property and mail between any point or points in the U.S. and any point or points in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama and any point or points beyond those countries as well as between any point or points in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama on flights serving the U.S. and between any point or points in the U.S. and Belize City, Belize.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 00–3381 Filed 2–11–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–6441]

Proposed Acquisition of 87-Foot Coastal Patrol Boats: Draft Programmatic Environmental Assessment

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability and request for public comments.

SUMMARY: The Coast Guard announces the availability of a draft Programmatic Environmental Assessment on its proposal to replace its aging fleet of 82-foot patrol boats with 87-foot coastal patrol boats. We request your comments on the Assessment.

DATES: Comments and related material must reach the Docket Management Facility on or before March 25, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–1999–6441), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as the draft Programmatic Environmental Assessment (PEA), will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket, including the PEA, on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, the proposed project, or the associated PEA, call Ms. Sheri Imel, Coast Guard, telephone 757–628–4248. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related material on the draft Programmatic Environmental Assessment (PEA). If you do so, please include your name and address, identify the docket number for this notice (USCG–1999–6441) and give the reasons for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Proposed Action

The Coast Guard proposes to buy forty-one 87-foot coastal patrol boats to replace its aging fleet of 82-foot patrol boats. The new boats would be similar to nine 87-foot prototypes currently in use by the Coast Guard. The new boats would be located at existing facilities throughout the continental United States. As with the 82-footers, the new boats would be used for search and rescue, maritime law enforcement, alien migrant interdiction, drug interdiction, marine environmental response, recreational and commercial boating safety, environmental law enforcement, port safety and security, and military operations support. The new boats are needed because the existing fleet of 82-footers, constructed between 1960 and 1970, are reaching the end of their life expectancy and are becoming increasingly difficult to repair. Without a working, dependable boat to carry out our primary missions, our ability to serve the public will be severely hampered. Also, we expect the demands of our missions to increase over the next few years. We expect to see an increase in law enforcement, drug interdiction, alien migrant interdiction, and marine environmental response. The proposed action would improve our current level of service and help us meet our increased needs in the near future.

Draft Programmatic Environmental Assessment

We have prepared a draft Programmatic Environmental Assessment (PEA). The draft PEA identifies and examines the reasonable alternatives and assesses their potential environmental impact. Our preferred alternative is to add forty-one new 87-footers to the nine 87-foot prototypes currently being used. The remaining 82-footers would be classified as excess.

We are requesting your comments on environmental concerns you may have related to the PEA. This includes suggesting analyses and methodologies for use in the PEA or possible sources of data or information not included in the PEA. Your comments will be considered in preparing the final PEA.

Dated: February 7, 2000.

D.W. Reed,

Capt. U.S.C.G., Deputy Assistant Commandant for Acquisition.

[FR Doc. 00–3304 Filed 2–11–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Noise Exposure Maps for Burbank-Glendale-Pasadena Airport, Burbank, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Burbank-Glendale-Pasadena Airport Authority, for Burbank-Glendale-Pasadena Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is January 31, 2000.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, AICP, Environmental Protection Specialist, AWP–611.2, Planning Section, Western-Pacific Region, Federal Aviation Administration, Mailing Address: P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009–2007; Street Address: 15000 Aviation Boulevard, Room 3012, Hawthorne, CA 90261, Telephone 310/725–3615. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Burbank-Glendale-Pasadena Airport are in compliance with applicable requirements of part 150, effective January 31, 2000.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Burbank-Glendale-Pasadena Airport Authority. The specific maps under consideration are Exhibit 1, ''1998 Noise Exposure Map'' and Exhibit 2, ''2003 Noise Exposure Map,'' in the submission. The FAA has determined that these maps for the Burbank-Glendale-Pasadena Airport are in compliance with applicable requirements. This determination is effective on January 31, 2000. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.16 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Community and Environmental Needs Division, APP–600, 800 Independence Avenue, SW, Washington DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP–600, 15000 Aviation Boulevard, Room 3012, Hawthorne, CA 90261.

Mr. Dios Marrero, Acting Executive Director, Burbank-Glendale-Pasadena Airport Authority, 2627 Hollywood Way, Burbank, CA 91505.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on January 31, 2000.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 00–3383 Filed 2–11–00; 8:45 am]

BILLING CODE 1410–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–03]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 24, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 29591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 8, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29880.

Petitioner: Big Sky Transportation Co. d.b.a., Big Sky Airlines.

Section of the FAR Affected: 14 CFR 121.2(d)(ii) and 121.342.

Description of Relief Sought: To permit Big Sky to operate certain Fairchild Metro III and Fairchild Metro 23 airplanes until April 16, 2000, without installing the required pitot heat indication system in each airplane.

[FR Doc. 00–3303 Filed 2–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub–No. 91)] [1]

CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation (General Oversight)

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 1; Notice of general oversight proceeding, and request for comments from interested persons on the progress of implementation of the Conrail transaction and the workings of the various conditions imposed.

SUMMARY: In 1998, in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation,* STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998) (CSX/NS/CR Dec. No. 89), we approved, subject to various conditions (including a 5-year general oversight condition): (1) The acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail or CR) by (a) CSX Corporation and CSX Transportation, Inc. (collectively, CSX) and (b) Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS); and (2) the division of the assets of Conrail by and between CSX and NS. We are now instituting a proceeding to implement the general oversight condition imposed in *CSX/NS/CR Dec. No. 89.* We are requiring CSX and NS to file progress reports respecting the Conrail transaction and to make certain data available to interested persons. We are inviting interested persons to submit comments on the progress of implementation of the Conrail transaction and the conditions we imposed.

DATES: CSX and NS must file progress reports by June 1, 2000, and must make their 100% traffic waybill tapes available to interested persons by June 15, 2000. Comments of interested persons will be due on July 14, 2000. Replies will be due on August 3, 2000.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33388 (Sub-No. 91) and must be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Finance Docket No. 33388 (Sub-No. 91), 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of all documents filed in this proceeding must be sent to: (1) Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, NW, Washington, DC 20004–1202 (representing CSX); and (2) Richard A. Allen, Zuckert, Scoutt & Rasenberger, LLP, 888 17th Street, NW, Washington, DC 20006–3939 (representing NS).

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties must also submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), copies of all pleadings and

[1] A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in STB Finance Docket No. 33388.

attachments (*e.g.,* textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence) and must clearly label pleadings and attachments and corresponding computer disks/CDs with an identification acronym and pleading number. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in some version of Lotus, Excel, or Quattro Pro. Parties may individually seek a waiver from the disk-CD requirement.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: In *CSX/NS/CR Dec. No. 89,* we established general oversight for 5 years so that we might assess the progress of implementation of the Conrail transaction and the workings of the various conditions we imposed.[2] We retained jurisdiction to impose additional conditions and/or to take other action if, and to the extent, we determined that it was necessary to address harms caused by the Conrail transaction. As part of our oversight, we specifically indicated that we would monitor implementation of the transaction and the workings of our conditions to ensure adherence by CSX and NS to the various representations they made on the record during the course of the proceeding; to examine impacts involving the relationship of shortline railroads to their Class I connections and to other Class I railroads; to assess impacts within the Chicago switching district; to review the effect of the acquisition premium on the rate reasonableness jurisdictional threshold and on revenue adequacy determinations; and to monitor transaction-related impacts on Amtrak passenger operations and regional rail passenger operations. *See CSX/NS/CR Dec. No. 89,* slip op. at 20–21 (item 38), 160–61, 173–74 (ordering paragraph 1). We also indicated that, under the oversight process, we would continue to monitor our environmental mitigating conditions. *CSX/NS/CR Dec. No. 89,* slip op. at 161.

We are now instituting this STB Finance Docket No. 33388 (Sub-No. 91) proceeding to implement the general oversight condition imposed in *CSX/NS/CR Dec. No. 89.*[3] We invite information from interested persons as to both the status of implementation and the effects of the various conditions we imposed.

We are requiring CSX and NS to file, by June 1, 2000, progress reports respecting their implementation of the Conrail transaction. These progress reports should contain in-depth analyses of implementation of the transaction and of the workings of the various conditions. We are further requiring CSX and NS to make their 100% traffic waybill tapes available to interested persons by June 15, 2000. These tapes should include the most up-to-date data then accessible by CSX and NS.

We are directing that interested persons submit, by July 14, 2000, any comments respecting the progress of implementation of the Conrail transaction and the workings of the various conditions we imposed. Comments may be directed to any relevant matters, except as clarified below regarding operational monitoring matters and Buffalo Rate Study matters. Replies to comments must be submitted by August 3, 2000.

Operational Monitoring. In *CSX/NS/CR Dec. No. 89,* we imposed, in addition to the 5-year general oversight condition, an operational monitoring condition, *see CSX/NS/CR Dec. No. 89,* slip op. at 162–65, 176 (ordering paragraph 18). We emphasized that ''our 5-year oversight is separate from our operational monitoring,'' *CSX/NS/CR Dec. No. 89,* slip op. at 161. Thus, we do not intend to address matters respecting operational monitoring in the STB Finance Docket No. 33388 (Sub-No. 91) general oversight proceeding. Rather, as indicated in *CSX/NS/CR Dec. No. 89,* slip op. at 165, parties should bring any ongoing matters respecting operational monitoring or individual shipper service issues directly to the attention of the Director, Office of Compliance and Enforcement, Suite 780, at the Board's headquarters located at 1925 K Street, NW, Washington, DC 20423–0001.

Buffalo Rate Study. By decision issued late last year in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation (Buffalo Rate Study),* STB Finance Docket No. 33388 (Sub-No. 90), Decision No. 1 (STB served Dec. 15, 1999, and published in the **Federal Register** on Dec. 20, 1999, at 64 FR 71188), we initiated the 3-year Buffalo Rate Study, also separate from general oversight, to examine linehaul and switching rates for rail movements into and out of the State of New York's Buffalo area. Pleadings respecting: (a) The trend in rates for rail movements into and out of the Buffalo area, and (b) the conditions related to switching that we imposed in the Buffalo area, should be submitted in the STB Finance Docket No. 33388 (Sub-No. 90) Buffalo Rate Study proceeding in accordance with the procedural schedule applicable to that proceeding. *See Buffalo Rate Study,* Decision No. 2 (STB served Dec. 28, 1999, and published in the **Federal Register** on Jan. 4, 2000, at 65 FR 319) (revising the procedural schedule applicable to the Buffalo Rate Study proceeding). Other Buffalo-related matters specifically regarding the progress of implementation of the Conrail transaction and the workings of the various merger conditions should be submitted in the STB Finance Docket No. 33388 (Sub-No. 91) general oversight proceeding in accordance with the procedural schedule indicated in this decision.

Protective Order. Parties may submit filings (including electronic submissions contained on disks and CDs), as appropriate, under seal marked Confidential or Highly Confidential[4] pursuant to the protective order entered in STB Finance Docket No. 33388 in Decision No. 1 (served Apr. 16, 1997), as modified in various respects in Decision No. 4 (served May 2, 1997), Decision No. 15 (served Aug. 1, 1997), Decision No. 22 (served Aug. 21, 1997), Decision No. 46 (served Oct. 17, 1997), and Decision No. 87 (served June 11, 1998). Waybill files made available to interested persons will be subject to this protective order.

Service List. A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in STB Finance Docket No. 33388. This decision will serve as notice that persons who were parties of record in STB Finance Docket No. 33388 will not automatically be placed on the service list as parties of record in the STB Finance Docket Sub-No. 91 general oversight proceeding. Any persons interested in being on the STB Finance Docket No. 33388 (Sub-No. 91) service

[2] As discussed below: (1) Operational issues associated with implementation of the Conrail transaction are being handled separately through our Office of Compliance and Enforcement; and (2) we have initiated a separate 3-year proceeding to examine linehaul and switching rates for rail movements into and out of New York's Buffalo area.

[3] We are establishing a procedural schedule similar to that imposed in *Union Pacific Corporation,* Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company [General Oversight], STB Finance Docket No. 32760 (Sub-No. 21).

[4] Parties submitting filings under seal will be expected to file redacted versions that will be placed in the public docket.

list and receiving copies of CSX's and NS's filings relating to the general oversight proceeding must send us written notification with copies to CSX's and NS's representatives.[5]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: February 8, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–3395 Filed 2–11–00; 8:45 am]

BILLING CODE 4915–00–P

TRADE DEFICIT REVIEW COMMISSION

Notice of Open Hearing

AGENCY: U.S. Trade Deficit Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S. Trade Deficit Review Commission.

Name: Murray Weidenbaum, Chairman of the U.S. Trade Deficit Review Commission.

The Commission is mandated to report to the Congress and the President on the causes, consequences, and solutions to the U.S. trade deficit. The purpose of this public hearing is to take testimony from Members of Congress, and Administration and International Agency officials on the trade deficit causes, consequences, impacts and solutions. A research panel will provide perspective on trade and economic relations with China in the afternoon.

Background

In fulfilling its statutory mission, the Commission is holding field hearings to collect input from industry and labor leaders, government officials, leading researchers, other informed witnesses, and the public. Professor Murray Wiedenbaum of Washington University, St. Louis, who is a former Chairman of the President's Council of Economic Advisors, chairs the Commission. The Vice Chairman is Professor Dimitri Papadimitriou, President of The Jerome Levy Economics Institute at Bard College, Annandale-on-Hudson, New York.

[5] Persons who wish to be placed on *both* the STB Finance Docket No. 33388 (Sub-No. 90) Buffalo Rate Study service list *and* the STB Finance Docket No. 33388 (Sub-No. 91) general oversight service list must submit *two* separate written notifications (one applicable to the Buffalo Rate Study proceeding, and one applicable to the general oversight proceeding).

Purpose of Hearing

In light of the ongoing massive trade and current account deficits incurred by the United States, progress in improving U.S. exporters' access to foreign markets is critically important. The failure of the WTO Ministerial in Seattle to come up with a negotiating agenda for a new round of multilateral trade negotiations highlights how the consensus on reducing barriers to trade has fractured. Rebuilding the consensus on trade issues in the United States is of critical importance in addressing the large U.S. trade deficits. The work of the Commission, by analyzing the U.S. trade deficits in a non-partisan manner with the input of leading experts, will provide a reasoned and informed answer on how to respond to the trade deficit and its consequences. The findings of the Commission, while not binding, will likely form the basis for Congressional consensus building on trade policy as we enter the next century. There will be two sessions, one in the morning and one in the afternoon, for presentations by invited witnesses on their views on the interrelationship between the trade deficit and the topics of the hearing. There will be a question and answer period between the Commissioners and the witnesses. Public participation is invited and there will be an open-mike session for public comment at the conclusion of the afternoon session. Sign-up for the open-mike session will take place in the afternoon and will be on a first come first served basis. Each individual or group making an oral presentation will be limited to a total time of 3 minutes. Because of time constraints, parties with common interests are encouraged to designate a single speaker to represent their views.

DATE AND TIME: Thursday, February 24, 2000, 10:00 AM to 5:30 PM Eastern Standard Time inclusive.

ADDRESSES: The hearing will be held in Room 562 of the Dirksen Senate Office Building located at First Street and Constitution Avenue, N.E., Washington, DC. Public seating is limited to 75 to 100 seats and will be on a first come first served basis.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing or who wishes to submit oral or written comments should contact Kathy Michels, Administrative Officer for the U.S. Trade Deficit Review Commission, 444 North Capitol Street, NW, Suite 706, Washington, DC 20001; phone 202/624–1409; or via e-mail at: *kmichels@sso.org.*

Providing Oral or Written Comments

Copies of the draft meeting agenda, when available, may be obtained from the U.S. Trade Deficit Review Commission by going to the Commission's website at www.ustdrc.gov. The Commission requests that written public statements submitted for the record be brief and concise and limited to two pages in length. Written comments (at least 35 copies) must be received at the USTDRC Headquarters Office in Washington, DC by February 21, 2000. Comments received too close to the hearing date will normally be provided to the Commission Members at its hearing. Written comments may be provided up until the time of the hearing.

Authority: The Trade Deficit Review Commission Act, Public Law 105–277, Div. A, section 127, 112 Stat. 2681–547 (1998), established the Commission to study the nature, causes and consequences of the United States merchandise trade and current accounts deficits and report its findings to the President and the Congress. By statute, the Commission must hold at least 4 regional field hearings and 1 hearing in Washington, DC. This is the fourth in a series of field hearings to be conducted. The schedule of hearings is available at the US Trade Deficit Review Commission website www.ustdrc.gov.

Dated at Washington, DC, February 8, 2000.

For the U.S. Trade Deficit Review Commission.

Allan I. Mendelowitz,

Executive Director, U.S. Trade Deficit Review Commission.

[FR Doc. 00–3297 Filed 2–11–00; 8:45 am]

BILLING CODE 6820–46–P

TRADE DEFICIT REVIEW COMMISSION

Notice of Open Hearing of the U.S. Trade Deficit Review Commission

AGENCY: U.S. Trade Deficit Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S. Trade Deficit Review Commission.

The Commission is mandated to report to the Congress and the President on the causes, consequences, and solutions to the U. S. trade deficit. The purpose of this public hearing is to take testimony from leading experts in the fields of finance, industry and labor. The morning session will focus on the role of financial markets as they relate to the sustainability of the trade and current account deficits and the possible paths of adjustment the market may impose. The afternoon session will

focus on the importance of U.S. service sector exports, and the challenges and obstacles that this sector faces in international markets.

Background

In fulfilling its statutory mission, the Commission is holding field hearings to collect input from industry and labor leaders, government officials, leading researchers, other informed witnesses, and the public. Professor Murray Wiedenbaum of Washington University, St. Louis, who is a former chairman of the President's Council of Economic Advisors, chairs the Commission. The Vice Chairman is Professor Dimitri Papadimitriou, president of the Jerome Levy Economics Institute at Bard College, Annandale-on-Hudson, N.Y. The Honorable C. Richard D'Amato, Commissioner, will chair the New York hearing.

Purpose of Hearing

In light of the ongoing massive trade and current account deficits incurred by the United States, progress in improving U.S. exporters' access to foreign markets is critically important. The failure of the WTO Ministerial in Seattle to come up with a negotiating agenda for a new round of multilateral trade negotiations highlights how the consensus on reducing barriers to trade has fractured. Rebuilding the consensus on trade issues in the United States is of critical importance in addressing the large U.S. trade deficits. The work of the Commission, by analyzing the U.S. trade deficits in a non-partisan manner with the input of leading experts, will provide a reasoned and informed answer on how to respond to the trade deficit and its consequences. The findings of the Commission, while not binding, will likely form the basis for Congressional consensus building on trade policy as we enter the next century.

There will be two sessions, one in the morning and one in the afternoon, for presentations by invited witnesses on their views on the interrelationship between the trade deficit and the topics of the hearing. There will be a question and answer period between the Commissioners and the witnesses. Public participation is invited and there will be an open-mike session for public comment at the conclusion of the afternoon session. Sign-up for the open-mike session will take place in the afternoon and will be on a first come first served basis. Each individual or group making an oral presentation will be limited to a total time of 3 minutes. Because of time constraints, parties with common interests are encouraged to designate a single speaker to represent their views.

DATE AND TIME: Monday, March 13, 2000, 9 am to 6 pm Eastern Standard Time inclusive.

ADDRESSES: The hearing will be held at The Regent Wall Street, site of the historic Merchants Exchange, 55 Wall Street, New York, NY 10005. Unlimited seating is available for all dignitaries and members of the public attending the hearing. Dignitaries should call the USTDRC to register.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing or who wishes to submit oral or written comments should contact Kathy Michels, Administrative Officer for the U.S. Trade Deficit Review Commission, 444 North Capitol Street, NW, Suite 706, Washington, DC 20001; phone 202/624–1409; or via e-mail at: kmichels@sso.org.

Providing oral or written comments: Copies of the draft meeting agenda, when available, may be obtained from the U.S. Trade Deficit Review Commission by going to the Commission's website at www.ustdrc.gov. The Commission requests that written public statements submitted for the record be brief and concise and limited to two pages in length. Written comments (at least 35 copies) must be received at the USTDRC Headquarters Office in Washington, DC by March 6, 2000. Comments received too close to the hearing date will normally be provided to the Commission Members at its hearing. Written comments may be provided up until the time of the hearing.

Authority: The Trade Deficit Review Commission Act, Pub. L. No.105–277, Div. A, section 127, 112 Stat. 2681–547 (1998), established the Commission to study the nature, causes and consequences of the United States merchandise trade and current accounts deficits and report its findings to the President and the Congress. By statute, the Commission must hold at least 4 regional field hearings and 1 hearing in Washington, DC. This is the fourth in a series of field hearings to be conducted. The schedule of hearings is available at the US Trade Deficit Review Commission website www.ustdrc.gov.

For the U.S. Trade Deficit Review Commission.

Dated at Washington, DC, February 8, 2000.

Allan I. Mendelowitz,

Executive Director, U.S. Trade Deficit Review Commission.

[FR Doc. 00–3401 Filed 2–11–00; 8:45 am]

BILLING CODE 6820–46–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on the Readjustment of Veterans will be held February 24 and 25, 2000. This is a regularly scheduled meeting for the purpose of reviewing VA services for veterans, and to formulate Committee recommendations and objectives. The meeting on both days will be held at The American Legion, Washington Office, 1608 K Street, NW, Washington, DC. The agenda on both days will commence at 8:30 a.m. and adjourn at 4:30 p.m.

The agenda for February 24 will begin with a review of the transition of the Veterans Health Administration (VHA) to an outpatient managed health care system, and a discussion of VHA special emphasis programs. The agenda will also cover a review of the Readjustment Counseling Service Vet Centers, and will review the programs and activities of VHA's medical center-based post-traumatic stress disorder and substance abuse program.

On February 25, the Committee will review issues related to compensation and pension for PTSD, and VHA programs for women veterans and AIDS services. The agenda will also consist of a planning meeting to formulate objectives and recommendations for the Committee's Congressional report.

The meeting will be open to the public. Those who plan to attend or who have questions concerning the meeting should contact Alfonso R. Bartes, Director, Readjustment Counseling Service, Department of Veterans Affairs (telephone number: 202–273–8967).

Dated: February 4, 2000.

By Direction of the Secretary:

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–3294 Filed 2–11–00; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 65, No. 30

Monday, February 14, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Glycoprotein Hormone Superagonists

Correction

In notice document 00–2630 beginning on page 5878 in the issue of Monday, February 7, 2000, make the following correction:

On page 5878, in the third column, in **SUMMARY**, in the 12th line, ''EndocrinoLogiz, Inc.'' should read ''EndocrinoLogix, Inc.''.

[FR Doc. C0–2630 Filed 2–11–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42310; File No. SR-NASD-99-66]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Implementation of Mandatory Trade Reporting for PORTAL Securities

Correction

In notice document 00–818 beginning on page 2207, in the issue of Thursday, January 13, 2000, make the following correction:

On page 2207, in the first column, the docket number is corrected to read as set forth above.

[FR Doc. C0–818 Filed 2-11-00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 302

[Docket No. OST-97-2090]

RIN 2105-AC48

Rules of Practice in Proceedings

Correction

In rule document 00–2554 beginning on page 6446 in the issue of Wednesday, February 9, 2000 make the following correction:

§302.304 [Corrected]

1. On page 6475, second column §302.304, paragraphs (b)(2)(i), (ii), and (iii) were erroneously deleted. They are being correctly added to read as follows:

§302.304 Service of documents.

* * * * *

(b)* * *

(2) Applicants for scheduled foreign air transportation authority shall serve:

(i) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or in the *Air Cargo Guide* for the country-pair market(s) specified in the application,

(ii)The airport authority of each U.S. airport that the applicant proposes to serve, and

(iii) Any other person who has filed a pleading in a related proceeding under section 41102, 41302, or 40109 of the Statute.

* * * * *

[FR Doc. C0–2554 Filed 2–11–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
February 14, 2000

Part II

Department of Education

Office of Elementary and Secondary Education; Safe and Drug-Free Schools and Communities National Programs; Federal Activities; Effective Alternative Strategies: Grant Competition To Reduce Student Suspensions and Expulsions and Ensure Educational Progress of Students Who Are Suspended or Expelled; Notice

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Safe and Drug-Free Schools and Communities National Programs; Federal Activities; Effective Alternative Strategies: Grant Competition To Reduce Student Suspensions and Expulsions and Ensure Educational Progress of Students Who Are Suspended or Expelled

AGENCY: Department of Education.

ACTION: Notice of proposed priority and selection criteria for fiscal year (FY) 2000 and subsequent years.

SUMMARY: The Secretary announces a proposed priority and selection criteria for FY 2000 and, at the discretion of the Secretary, for subsequent years under the Safe and Drug-Free Schools and Communities National Programs—Federal Activities-Effective Alternative Strategies: Grant Competition to Reduce Student Suspensions and Expulsions and Ensure Educational Progress of Suspended and Expelled Students. The Secretary takes this action to focus Federal financial assistance on an identified national need to reduce student suspensions and expulsions and ensure educational progress of suspended and expelled students.

DATES: We must receive your comments on or before March 15, 2000.

ADDRESSES: All comments concerning this proposed priority and selection criteria should be addressed to Dr. Ann Weinheimer, U.S. Department of Education, 400 Maryland Avenue, SW—Room 3E330, Washington, DC 20202–6123. Comments also may be sent via the Internet: *comments@ed.gov.* You must include the phrase ''Reduce Student Suspensions and Expulsions and Ensure Educational Progress of Suspended and Expelled Students'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Dr. Ann Weinheimer, (202) 708–5939. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of the notice of final priority. The notice inviting applications will specify the date and time by which applications for this competition must be received by the Department. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority and selection criteria. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, at 400 Maryland Avenue, SW—Room 3E330, Washington, DC, between the hours of 8:00 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability that needs assistance to review the comments. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339, between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

General

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project depends on the final priority, the availability of funds, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements. In making awards under this grant program, the Secretary may take into consideration the geographic distribution of the projects in addition to the rank order of applicants.

Contingent upon the availability of funds, the Secretary may make additional awards in Fiscal Year 2001 from the rank-ordered list of nonfunded applications from this competition.

Absolute Priority

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition *only* those applications that meet this absolute priority: *Absolute* Priority—*Enhance, Implement, and Evaluate Strategies to Reduce the Number and Duration of Student Suspensions and Expulsions and Ensure Continued Educational Progress for Students Who Are Suspended or Expelled From School.*

Eligible Applicants

Eligible applicants under this competition are public and private non-profit organizations and individuals.

Selection Criteria

The Secretary proposes to use the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) Need for Project (10 points)

In determining the need for the proposed project the following factor is considered: The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) Quality of the Project Design (30 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (6 points)

(B) The extent to which the proposed project encourages parental involvement. (6 points)

(C) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (6 points)

(D) The extent to which the proposed project represents an exceptional approach to the priority. (6 points)

(E) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State and Federal resources. (6 points)

(3) Quality of Project Services (30 points)

In determining the quality of the proposed project services, the following factors are considered:

(A) The extent to which the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age or disability. (6 points)

(B) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (8 points)

(C) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards. (8 points)

(D) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate community partners for maximizing the effectiveness of project services. (8 points)

(4) Quality of Project Personnel (15 points)

In determining the quality of project personnel, the following factors are considered:

(A) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (5 points)

(B) The qualifications, including relevant training and experience, of key project personnel. (10 points)

(5) Quality of the Project Evaluation (15 points)

In determining the quality of the evaluation, the following factors are considered:

(A) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (10 points)

(B) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Program Authority: 20 U.S.C. 7131.

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF, you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.184H Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition to Reduce Student Suspensions and Expulsions, and Ensure Educational Progress of Suspended and Expelled Students)

Dated: February 9, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–3476 Filed 2–11–00; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Monday,

February 14, 2000

Part III

Department of Education

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs; Federal Activities Grant Program—Middle School Drug Prevention and School Safety Program Coordinators; Notice

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs; Federal Activities Grant Program—Middle School Drug Prevention and School Safety Program Coordinators

AGENCY: Department of Education.

ACTION: Notice of proposed priority, definitions, and selection criteria for Fiscal Year (FY) 2000 and subsequent years.

SUMMARY: The Secretary announces the proposed priority, definitions, and selection criteria for FY 2000, and, at the discretion of the Secretary, for subsequent years under the Safe and Drug-Free Schools and Communities (SDFSC) National Programs Federal Activities Grants Program for the Middle School Drug Prevention and School Safety Program Coordinators competition. The Secretary takes this action to focus Federal financial assistance on a national need to recruit, hire, and train persons to serve as drug prevention and school safety program coordinators in middle schools that have significant drug, discipline and violence problems.

DATES: Comments must be received by the Department on or before March 15, 2000.

ADDRESSES: All comments concerning this proposed priority, definitions, and selection criteria should be addressed to Deirdra R. Hilliard, U.S. Department of Education, 400 Maryland Avenue, SW, 3E256, Washington, DC 20202–6123. Comments may be sent through the Internet: *comments@ed.gov.* You must include the term ''Middle School Coordinator'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Deirdra R. Hilliard, (202) 260–2643. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (*e.g.* Braille, large print, audiotape, or computer diskette) upon request to the contact person listed above.

Note: This notice does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of the notice of final priority, definitions, and selection criteria. The notice inviting applications will specify the date and time by which applications for this competition must be received by the Department. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority, definitions, and selection criteria. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3E222, 400 Maryland Avenue, SW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays. On request, the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability that needs assistance to review the comments. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Under the Safe and Drug-Free Schools and Communities (SDFSC) National Programs Federal Activities Grants Program for the Middle School Drug Prevention and School Safety Program Coordinators competition the Secretary plans to make awards for up to 36 months to local educational agencies.

In making awards under this grant program, the Secretary may take into consideration the geographic distribution in addition to the rank order of applicants.

Contingent upon the availability of funds, the Secretary may make additional awards in fiscal year 2001 from the rank-ordered list of unfunded applications from this competition.

Definitions

The Secretary proposes that the following definitions apply to this competition:

(a) *Middle schools* are defined as any school serving students in two or more grades from grades five through nine. (Note: Students in grades lower than five or higher than nine are not eligible to be served under this priority.)

(b) *Local educational agencies (LEAs) with the most significant problems in their middle schools* are defined as those that have identified drug use, drug prevention and school safety as a serious problem in their most recent needs assessment and that have taken one or more of the following actions within the 12 months preceding the date of this announcement:

(1) Suspended, expelled, or transferred to alternative schools or programs at least one middle school student for possession, distribution, or use of alcohol or drugs, including tobacco;

(2) Referred for treatment of substance abuse at least five middle school students;

(3) Suspended, expelled, or transferred to alternative schools or programs at least one middle school student for possession or use of a firearm or other weapon;

(4) Suspended, expelled or transferred to alternative schools or programs at least five middle school students for physical attacks or fights.

Absolute Priority

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act, the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition *only* applications that meet this absolute priority.

Under the proposed absolute funding priority for this grant competition, LEAs with significant drug, discipline, or school safety problems in their middle schools must propose projects that—

(a) Recruit, hire, and train full-time drug prevention and school safety program coordinator(s) for their middle schools with significant drug, discipline or school safety problems;

(b) Require coordinators hired with funds under this priority to perform at least the following functions in one or more middle schools with significant drug, discipline or school safety problems:

(1) Identify research-based drug and violence prevention strategies and programs;

(2) Assist schools in adopting the most successful strategies, including training of teachers and staff and relevant partners, as needed;

(3) Develop, conduct, and analyze assessments of school crime and drug problems;

(4) Work with community agencies and organizations to ensure that students' needs are met;

(5) Work with parents and students to obtain information about effective programs and strategies and encourage their participation in program selection and implementation;

(6) Facilitate evaluation of prevention programs and strategies and use findings to modify programs, as needed;

(7) Identify additional funding sources for drug prevention and school safety program initiatives;

(8) Provide feedback to SEAs on programs and activities that have proven to be successful in reducing drug use and violent behavior;

(9) Coordinate with student assistance and employee assistance programs; and

(10) Link other educational resources, *e.g.* Title I compensatory education funds, to programs and strategies that serve to create safer, more orderly schools; and

(c) Have measurable goals and objectives and report annually on progress toward meeting those goals and objectives.

Local educational agencies may apply for funding under this proposed priority to hire one or more coordinators to serve middle schools in the district. Each coordinator hired with funds from this grant must:

(1) Serve at least one middle school but no more than seven middle schools;

(2) Serve only students in two or more grades from grades five through nine;

Note: Students in grades lower than five or higher than nine are not eligible to be served under this proposed priority.

(3) Have no duties other than coordination of drug prevention or school safety programs;

(4) At a minimum, have a degree from an accredited four-year institution of higher education and an academic background or equivalent work experience in a field related to youth development, such as education, psychology, sociology, social work, or nursing.

LEAs may apply in consortia with one or more adjacent LEAs; however, each participating LEA must ensure that all requirements of the priority for this competition are met.

Selection Criteria

The Secretary proposes to use the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points.

(1) Need for the Project (25 Points)

In determining the need for the proposed project, the following factor is considered: The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) Quality of the Project Design (25 Points)

In determining the quality of the design of the proposed project, the following factors are considered:

(A) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population;

(B) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance;

(C) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population, including community coalitions;

(D) The extent to which the proposed project encourages parental involvement; and

(E) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(3) Adequacy of Resources (25 Points)

In determining the adequacy of resources, the following factors are considered:

(A) The adequacy of support, including facilities, equipment, supplies, and other resources from the applicant organization or the lead applicant organization;

(B) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits;

(C) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support; and

(D) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of federal funding.

(4) Quality of the Project Evaluation (25 Points)

In determining the quality of the project evaluation, the following factors are considered:

(A) The extent to which the methods of evaluation are appropriate to the context within which the project operates;

(B) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies; and

(C) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local government for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 7131

Electronic Access to This Document

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http://www.ocfo.ed.gov/fedreg.htm
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(Catalog of Federal Domestic Assistance Number 84–184K, Safe and Drug-Free Schools and Communities Act National Programs—Federal Activities Grants Program)

Dated: February 9, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–3477 Filed 2–11–00; 8:45 am]

BILLING CODE 4000–01–U

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Federal Register

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Monday, February 14, 2000

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

Last List December 21, 1999

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–6)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–038–00003–2)	7.00	[5] Jan. 1, 1999
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1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
700–1199	(869–038–00005–9)	27.00	Jan. 1, 1999
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1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–038–00014–8)	41.00	Jan. 1, 1999
1000–1199	(869–038–00015–6)	46.00	Jan. 1, 1999
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–038–00017–2)	55.00	Jan. 1, 1999
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
1950–1999	(869–038–00020–2)	41.00	Jan. 1, 1999
2000–End	(869–038–00021–1)	27.00	Jan. 1, 1999
8	(869–038–00022–9)	36.00	Jan. 1, 1999
9 Parts:			
1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
200–End	(869–038–00024–5)	37.00	Jan. 1, 1999
10 Parts:			
1–50	(869–038–00025–3)	42.00	Jan. 1, 1999
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–00029–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
600–End	(869–038–00035–1)	45.00	Jan. 1, 1999
13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–038–00037–7)	50.00	Jan. 1, 1999
60–139	(869–038–00038–5)	42.00	Jan. 1, 1999
140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
15 Parts:			
0–299	(869–038–00042–3)	25.00	Jan. 1, 1999
300–799	(869–038–00043–1)	36.00	Jan. 1, 1999
800–End	(869–038–00044–0)	24.00	Jan. 1, 1999
16 Parts:			
0–999	(869–038–00045–8)	32.00	Jan. 1, 1999
1000–End	(869–038–00046–6)	37.00	Jan. 1, 1999
17 Parts:			
1–199	(869–038–00048–2)	29.00	Apr. 1, 1999
200–239	(869–038–00049–1)	34.00	Apr. 1, 1999
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869–038–00051–2)	48.00	Apr. 1, 1999
400–End	(869–038–00052–1)	14.00	Apr. 1, 1999
19 Parts:			
1–140	(869–038–00053–9)	37.00	Apr. 1, 1999
141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869–038–00059–8)	24.00	Apr. 1, 1999
100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	50.00	Apr. 1, 1999
500–599	(869–038–00064–4)	28.00	Apr. 1, 1999
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
800–1299	(869–038–00066–1)	35.00	Apr. 1, 1999
1300–End	(869–038–00067–9)	14.00	Apr. 1, 1999
22 Parts:			
1–299	(869–038–00068–7)	44.00	Apr. 1, 1999
300–End	(869–038–00069–5)	32.00	Apr. 1, 1999
23	(869–038–00070–9)	27.00	Apr. 1, 1999
24 Parts:			
0–199	(869–038–00071–7)	34.00	Apr. 1, 1999
200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–038–00075–0)	18.00	Apr. 1, 1999
25	(869–038–00076–8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0-1–1.60	(869–038–00077–6)	27.00	Apr. 1, 1999
§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–038–00080–6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869–038–00083–1)	27.00	[7] Apr. 1, 1999
§§ 1.641–1.850	(869–038–00084–9)	35.00	Apr. 1, 1999
§§ 1.851–1.907	(869–038–00085–7)	40.00	Apr. 1, 1999
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999
30–39	(869–038–00090–3)	28.00	Apr. 1, 1999
40–49	(869–038–00091–1)	17.00	Apr. 1, 1999
50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–038–00094–6)	11.00	Apr. 1, 1999
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869–038–00096–2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
28 Parts:			
0-42	(869–038–00098–9)	39.00	July 1, 1999
43-end	(869-038-00099-7)	32.00	July 1, 1999
29 Parts:			
0–99	(869–038–00100–4)	28.00	July 1, 1999
100–499	(869–038–00101–2)	13.00	July 1, 1999
500–899	(869–038–00102–1)	40.00	[8] July 1, 1999
900–1899	(869–038–00103–9)	21.00	July 1, 1999
1900–1910 (§§ 1900 to 1910.999)	(869–038–00104–7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869–038–00105–5)	28.00	July 1, 1999
1911–1925	(869–038–00106–3)	18.00	July 1, 1999
1926	(869–038–00107–1)	30.00	July 1, 1999
1927–End	(869–038–00108–0)	43.00	July 1, 1999
30 Parts:			
1–199	(869–038–00109–8)	35.00	July 1, 1999
200–699	(869–038–00110–1)	30.00	July 1, 1999
700–End	(869–038–00111–0)	35.00	July 1, 1999
31 Parts:			
0–199	(869–038–00112–8)	21.00	July 1, 1999
200–End	(869–038–00113–6)	48.00	July 1, 1999
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–038–00114–4)	46.00	July 1, 1999
191–399	(869–038–00115–2)	55.00	July 1, 1999
400–629	(869–038–00116–1)	32.00	July 1, 1999
630–699	(869–038–00117–9)	23.00	July 1, 1999
700–799	(869–038–00118–7)	27.00	July 1, 1999
800–End	(869–038–00119–5)	27.00	July 1, 1999
33 Parts:			
1–124	(869–038–00120–9)	32.00	July 1, 1999
125–199	(869–038–00121–7)	41.00	July 1, 1999
200–End	(869–038–00122–5)	33.00	July 1, 1999
34 Parts:			
1–299	(869–038–00123–3)	28.00	July 1, 1999
300–399	(869–038–00124–1)	25.00	July 1, 1999
400–End	(869–038–00125–0)	46.00	July 1, 1999
35	(869–038–00126–8)	14.00	[8] July 1, 1998
36 Parts			
1–199	(869–038–00127–6)	21.00	July 1, 1999
200–299	(869–038–00128–4)	23.00	July 1, 1999
300–End	(869–038–00129–2)	38.00	July 1, 1999
37	(869–038–00130–6)	29.00	July 1, 1999
38 Parts:			
0–17	(869–038–00131–4)	37.00	July 1, 1999
18–End	(869–038–00132–2)	41.00	July 1, 1999
39	(869–038–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–038–00134–9)	33.00	July 1, 1999
50–51	(869–038–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–038–00136–5)	33.00	July 1, 1999
52 (52.1019–End)	(869–038–00137–3)	37.00	July 1, 1999
53–59	(869–038–00138–1)	19.00	July 1, 1999
60	(869–038–00139–0)	59.00	July 1, 1999
61–62	(869–038–00140–3)	19.00	July 1, 1999
63 (63.1–63.1119)	(869–038–00141–1)	58.00	July 1, 1999
63 (63.1200–End)	(869–038–00142–0)	36.00	July 1, 1999
64–71	(869–038–00143–8)	11.00	July 1, 1999
72–80	(869–038–00144–6)	41.00	July 1, 1999
81–85	(869–038–00145–4)	33.00	July 1, 1999
86	(869–038–00146–2)	59.00	July 1, 1999
87-135	(869–038–00146–1)	53.00	July 1, 1999
136–149	(869–038–00148–9)	40.00	July 1, 1999
150–189	(869–038–00149–7)	35.00	July 1, 1999
190–259	(869–038–00150–1)	23.00	July 1, 1999
260–265	(869–038–00151–9)	32.00	July 1, 1999
266–299	(869–038–00152–7)	33.00	July 1, 1999
300–399	(869–038–00153–5)	26.00	July 1, 1999
400–424	(869–038–00154–3)	34.00	July 1, 1999
425–699	(869–038–00155–1)	44.00	July 1, 1999
700–789	(869–038–00156–0)	42.00	July 1, 1999
790–End	(869–038–00157–8)	23.00	July 1, 1999
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–038–00158–6)	14.00	July 1, 1999
101	(869–038–00159–4)	39.00	July 1, 1999
102–200	(869–038–00160–8)	16.00	July 1, 1999
201–End	(869–038–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–038–00162–4)	36.00	Oct. 1, 1999
400–429	(869–034–00163–2)	44.00	Oct. 1, 1999
430–End	(869–038–00164–1)	54.00	Oct. 1, 1999
43 Parts:			
1–999	(869–038–00165–9)	32.00	Oct. 1, 1999
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
44	(869–038–00167–5)	28.00	Oct. 1, 1999
45 Parts:			
1–199	(869–038–00168–3)	33.00	Oct. 1, 1999
200–499	(869–038–00169–1)	16.00	Oct. 1, 1999
500–1199	(869–034–00170–5)	30.00	Oct. 1, 1999
1200–End	(869–038–00171–3)	40.00	Oct. 1, 1999
46 Parts:			
1–40	(869–038–00172–1)	27.00	Oct. 1, 1999
41–69	(869–038–00173–0)	23.00	Oct. 1, 1999
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–038–00175–6)	26.00	Oct. 1, 1999
140–155	(869–038–00176–4)	15.00	Oct. 1, 1999
156–165	(869–038–00177–2)	21.00	Oct. 1, 1999
166–199	(869–038–00178–1)	27.00	Oct. 1, 1999
200–499	(869–038–00179–9)	23.00	Oct. 1, 1999
500–End	(869–038–00180–2)	15.00	Oct. 1, 1999
47 Parts:			
0–19	(869–038–00181–1)	39.00	Oct. 1, 1999
20–39	(869–038–00182–9)	26.00	Oct. 1, 1999
*40–69	(869–038–00183–7)	26.00	Oct. 1, 1999
*70–79	(869–038–00184–5)	39.00	Oct. 1, 1999
80–End	(869–038–00185–3)	40.00	Oct. 1, 1999
48 Chapters:			
1 (Parts 1–51)	(869–038–00186–1)	55.00	Oct. 1, 1999
1 (Parts 52–99)	(869–038–00187–0)	30.00	Oct. 1, 1999
2 (Parts 201–299)	(869–038–00188–8)	36.00	Oct. 1, 1999
3–6	(869–034–00189–6)	27.00	Oct. 1, 1999
*7–14	(869–038–00190–0)	35.00	Oct. 1, 1999
15–28	(869–038–00191–8)	36.00	Oct. 1, 1999
29–End	(869–038–00192–6)	25.00	Oct. 1, 1999
49 Parts:			
1–99	(869–038–00193–4)	34.00	Oct. 1, 1999
100–185	(869–034–00193–9)	50.00	Oct. 1, 1998
186–199	(869–038–00195–1)	13.00	Oct. 1, 1999
200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
400–999	(869–038–00197–7)	57.00	Oct. 1, 1999
1000–1199	(869–038–00198–5)	17.00	Oct. 1, 1999
1200–End	(869–038–00199–3)	14.00	Oct. 1, 1999
50 Parts:			
1–199	(869–038–00200–1)	43.00	Oct. 1, 1999
200–599	(869–038–00201–9)	22.00	Oct. 1, 1999

Title	Stock Number	Price	Revision Date
600–End	(869–038–00202–7)	37.00	Oct. 1, 1999
CFR Index and Findings Aids	(869–038–00047–4)	48.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.